IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1901.

THE STATE OF MINNESOTA,

Complainant,

vs.

NORTHERN SECURITIES COMPANY, a Corporation,

Defendant.

2

TO THE JUDGES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

Your Oratrix, the State of Minnesota, Complainant, by Wallace B. Douglas, Attorney General thereof, brings this its Bill of Complaint against the Northern Securities Company, a corporation organized under and by virtue of the laws of the State of New Jersey, and alleges:

I.

That by an Act of Congress, entitled, "An Act for the Admission of Minnesota into the Union," approved May 11th, A. D. 1858, 3
the said State of Minnesota was admitted into the Union upon an equal footing with the original states.

II.

That said Northern Securities Company is a corporation organized, as hereinafter alleged, under and by virtue of the Laws of the State of New Jersey, and is a citizen of the State of New Jersey.

III.

A.

That by an Act of the Congress of the United States, of March 12, 1860, extending to the State of Minnesota the Swamp Lands Grant theretofore made to the State of Arkansas, and by
4 various subsequent acts, the Congress of the United States donated to the State of Minnesota, from the Public Domain, large quantities of lands situated within the State of Minnesota, and of the value of several millions of dollars. That the State of Minnesota, now has left and undisposed of, more than three million acres of said lands, of the value of more than Fifteen Million Dollars, much of which said land is located in the territory traversed by the railroads of the Great Northern and Northern Pacific Railway Companies, as hereinafter alleged. That the value of said land, and the salability thereof, depends in very large measure upon having free, uninterrupted and open competition in passenger and freight rates over the lines of railway owned and operated by said Great Northern and Northern Pacific Railway Companies.

5 That many of said lands are vacant and unsettled and located in regions not at present reached by railway lines, and depend for settlement, upon the construction of lines in the future; that it has heretofore been the practice of said Great Northern and Northern Pacific Railway Companies, respectively, to extend spur lines into territory adjacent to each of said roads, as well as into new territory, for the purpose of developing such territory, as well as to obtain traffic therefrom; that such new lines have been built in the past very largely by reason of the rivalry heretofore existing between said companies, for existing, as well as new, business; that under the consolidation and unity of control hereinafter set forth, such rivalry will cease, and many of the lands now owned by the State of Minnesota will not be reached by railroads for years to come, if at all, owing to such combination and consolidation remov-
6 ing all rivalry and competition between said companies; that the settlement and occupation of said lands will add very much to their value and such occupation will depend entirely upon the accessibility of railway lines and transportation facilities for marketing the products raised thereon; that if said lands are sold and become occupied, they will add very largely to the taxable value of the property of the state, and that said lands cannot be so sold or

the income of the state increased thereby without the construction of railroad lines to, or adjacent to, the same.

B.

That the State of Minnesota is now and for many years past has been the owner of, and continuously maintained, an educational 7
institution for the benefit of its citizens, known as the University of Minnesota; also a large number of hospitals for the insane, within its territorial limits; also five normal schools for the education of teachers within the state; also a State Training School for Boys and Girls; also several state schools for the education, care and maintenance of the deaf, dumb, blind and feeble-minded; also a state school for indigent and homeless children; also a state penitentiary and reformatory.

That for many years past the State of Minnesota has continuously maintained and supported each of said institutions, and in the care, maintenance and management thereof has been compelled to and in the future, of necessity, will annually purchase large quantities of supplies for said institutions, including provisions, clothing and fuel, a great portion of which the State of Minnesota is compelled to ship over the different lines of railway owned and operated by the Northern Pacific Railway Company and the Great Northern Railway Company. 8

That the State of Minnesota is compelled to expend annually more than Seven Hundred Thousand Dollars in the operation and maintenance of said public institutions, most of which sum is raised by general taxation upon the lands and other property of the citizens of the State of Minnesota, and situated therein. That the amount of taxes which said State of Minnesota can collect, and the successful maintenance of its said public institutions, as well as the performance of its governmental functions and affairs, depends largely upon the value of the real and personal property situated within its territorial limits, and the general prosperity and 9
business success of its citizens. That the value of said real and personal property of the citizens of the State of Minnesota, as well as their business success and general prosperity, depend very largely upon maintaining in said state free, open and unrestricted competition between the railway lines of said Great Northern and Northern Pacific Railway Companies respectively within said state.

C.

That it has been the settled policy and practice of the State of Minnesota since its organization as a territory, to develop the resources of the state by encouraging railroad building therein, and in furtherance of this policy, the Territory of Minnesota,
10 by an act thereof, under date of May 22nd, 1857, granted to the Minnesota and Pacific Railroad Company a charter, and in consideration of the construction and maintenance of a line of railway in Minnesota, by said company, said Territory donated to it out of its public domain about seven hundred thousand acres of land. That said Minnesota and Pacific Railroad Company thereafter became insolvent, and all its property was placed in the hands of a receiver; that such procedings were thereafter had that all the property of the last named company, including said land, was duly sold and conveyed to the St. Paul, Minneapolis and Manitoba Railway Company, hereinafter mentioned.

That the State of Minnesota, by an act of its legislature, and in consideration of the construction and maintenance of a line of rail-
11 way by the Great Northern Railway Company, hereinafter referred to, between St. Cloud and Hinckley, a distance of eighty-four miles, donated and conveyed to said last named company upwards of four hundred thousand acres of land then owned by and situated in the State of Minnesota, which said land was then worth more than One Million Dollars. That in carrying out said policy, and in aid of the building of railways within the State of Minnesota, there has been granted out of the public domain within the limits of the State of Minnesota, upwards of 10,500,000 acres of land, nearly all of which has been granted to said Great Northern and Northern Pacific Railway Companies, and the subsidiary companies owned and controlled by them.

D.

12

That by an act of the legislature of the State of Minnesota, approved March 3rd, 1881, entitled "An Act Granting Swamp Lands to Aid in the Construction of the Main Line of the Road of the Little Falls and Dakota Railway Company," and which now is a part of the Northern Pacific Railway Company system, hereinafter referred to, the State of Minnesota donated to said Little Falls and Dakota Railway Company, Two Hundred Forty-three Thousand Five Hundred and Ninety-one (243,591) acres of land situated in and

then belonging to said state, in consideration of the construction and maintenance by said last named railway company of a line of railway extending from Little Falls to Morris, in the State of Minnesota.

IV.

Your Oratrix further alleges that immense quantities of wheat 13
and other products are shipped annually from East Grand Forks, Crookston, Moorhead, Fergus Falls, and other competitive points within the State of Minnesota, and all on the lines of railway of the said Great Nothern and Northern Pacific Railway Companies, hereinafter referred to, to the cities of Duluth, St. Paul and Minneapolis, within the State of Minnesota. That nearly all of the shipments of such products made from the above named initial points are consigned to various citizens at either the city of Duluth, St. Paul or Minneapolis over one or the other of said lines of railroad last above named. That enormous quantities of merchandise have been and will continue to be shipped annually, over said lines of railway, between the cities of St. Paul and Minneapolis and various other cities and villages along said lines of railway situated within the State of 14
Minnesota, and which are purchased and used entirely by the people of said state. That the competition in both freight and passenger traffic to and from said places has always been sharp and active between said railway companies, and has secured to the residents of said cities, as well as the State of Minnesota, and to the State of Minnesota itself, much lower rates for both freight and passengers than would otherwise have been obtained or than will or can be obtained in case the consolidation or unity of control and management of said Great Northern and Northern Pacific Railway Companies hereinafter alleged, is not enjoined as herein prayed.

V.

That the Great Northern Railway Company is a corporation 15
organized and existing under and by virtue of the laws of the State of Minnesota, to-wit: under an act duly passed by the Territory of Minnesota, entitled, "An Act to incorporate the Minneapolis and St. Cloud Railroad Company," approved March first, A. D. 1856, and various subsequent acts of the State of Minnesota amendatory thereof and supplemental thereto, respectively entitled as follows:

"An Act to amend an Act entitled, 'An Act to incorporate the

Minneapolis and St. Cloud Railroad Company,' passed March 1st, 1856." Approved February 23rd, 1864.

"An Act of the Legislature of the State of Minnesota, entitled 'An Act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter,
16 or any other railroad in Southern Minnesota'." Approved February 11, 1865.

"An Act to amend an Act entitled 'An Act to incorporate the Minneapolis and St. Cloud Railroad Company,' approved March 1st, 1856, and to repeal certain portions of an Act amending the Charter of said Company, passed February 23rd, 1864." Approved February 28th, 1865.

"An Act to amend an Act entitled 'An Act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and Winona and St. Peter Railroad, or any other railroad in Southern Minnesota'." Approved March 5th, 1869.

"An Act to amend the Charter of the Minneapolis and St. Cloud
17 Railroad Company." Approved March 6th, 1869.

"An Act to amend the Charter of the Minneapolis and St. Cloud Railroad Company." Approved March 2nd, 1870.

"An Act to extend the time for the construction and completion of the branch of the Minneapolis and St. Cloud Railroad Company." Approved March 11th, 1879.

"An Act to amend an Act entitled 'An Act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter Railroad, or any other railroad in Southern Minnesota', approved February 11th, in the Year of Our Lord One Thousand Eight Hundred and Sixty-five as amended." Approved March 1st, 1885.

That on the 16th day of September, 1889, the corporate
18 name of said company was duly changed to the Great Northern Railway Company. That during the year 1889, said railway company caused to be constructed a line of railway extending from St. Cloud, Minnesota, to Hinckley, Minnesota, which line was immediately conveyed to the St. Paul, Minneapolis and Manitoba Railway Company, a corporation duly organized and existing under and by virtue of the Laws of the State of Minnesota, hereinafter referred to as the Manitoba Company. That said Manitoba Com-

pany, prior to the first day of February, 1890, had built, purchased and put in operation various lines of railway within the State of Minnesota, as well as in the States of North Dakota, Montana, Idaho and Washington, connecting by rail the cities of St. Paul and Minneapolis, within the State of Minnesota, and various other cities and villages within said state, with each other, and with Puget Sound, on the Pacific ocean; which said railways are hereinafter more particularly described. 19

That on the first day of February, 1890, said Manitoba Railway Company leased to the said Great Northern Railway Company, for a period of nine hundred and ninety-nine years, all of the lines of railway, including the rolling stock then owned and controlled by said Manitoba Company; that ever since said last named date said Great Northern Railway Company has continued to and now does control, operate and maintain each and all of said lines as one complete railroad system. That said lines of railway so constructed by said Manitoba Company and now so controlled, operated and maintained by said Great Northern Railway Company under said lease, are described as follows:

A line of railway extending from St. Paul, Minnesota, via Minneapolis, Elk River, St. Cloud, Sauk Centre, Fergus Falls, Glyndon, Crookston to the northern boundary line of the State of Minnesota at St. Vincent. 20

Another line of railway extending from Minneapolis, Minnesota, along the western bank of the Mississippi river to St. Cloud, Minnesota.

Another line of railway extending from St. Cloud easterly to Hinckley, Minnesota.

Another line of railway extending from Elk River, Minnesota, northward to Malaco, Minnesota, on the line of the St. Cloud and Hinckley Branch, last above referred to.

Another line of railway extending from Minneapolis, Minnesota, to Breckenridge, Minnesota. 21

Another line extending from Sauk Centre, Minnesota, to Park Rapids, Minnesota.

Another line of railway extending from Hutchinson Junction to Hutchinson, Minnesota.

Another line of railway extending from Benson, Minnesota, thence in a westerly direction to the western boundary line of the state; thence to Watertown, South Dakota.

Another line of railway extending from Evansville, Minnesota, westerly to the state boundary line, thence to Ellendale, North Dakota.

Another line of railway extending from Moorhead, Minnesota, westerly to the state boundary line; thence to Wahpeton, North
22 Dakota.

Another line of railway extending from Moorhead, Minnesota, to Crookston, Minnesota.

Another line of railway extending from Barnesville, Minnesota, to Moorhead, Minnesota.

Another line of railway extending from Carman, Minnesota, to Foster, Minnesota.

Another line of railway extending from Crookston, Minnesota, to Red Lake Falls and Thief River Falls, Minnesota.

All of the foregoing lines being situated in the State of Minnesota, except as hereinafter otherwise expressly stated.

That said Great Northern Railway Company now either owns or controls, and operates and maintains, by virtue of said lease, a line
23 or system of railways connecting with said lines above referred to, and extending from the western boundary line of the State of Minnesota through the States of North Dakota, Montana, Idaho and Washington, to Puget Sound on the Pacific Coast. The said railway lines covered by said lease, or owned by said Great Northern Railway Company aggregate a total of about four thousand five hundred miles.

That many of said railroads above described being located within the State of Minnesota, were built by subsidiary companies or corporations, and said Great Northern Railway Company now owns all of the capital stock of such corporations in addition and as supplemental to said lease; and in addition thereto said Great Northern Railway Company owns all of the capital stock of the Eastern Railway Company of Minnesota, a corporation organized under the
24 laws of the State of Minnesota, and which owns and operates a railway line extending from the cities of St. Paul and Minneapolis to Duluth, Minnesota; and from Duluth, Minnesota, to Bemidji, Minnesota; and by virtue of such ownership of stock said Great Northern Railway Company dictates the policy of said railway company and controls the lines of railway and properties of said Eastern Railway Company, and operates the same as a part of the Great Northern system of railway.

That said Great Northern Railway Company also owns all of the

capital stock of the Willmar and Sioux Falls Railroad Company, a corporation owning a railroad extending from Willmar, Minnesota, to Yankton, South Dakota, and by virtue of such ownership of stock, dictates the policy of and owns and controls the railway line and property of said Willmar and Sioux Falls Railroad Company.

That all of the railways and railway lines hereinbefore described 25
are operated and controlled by and form a complete system under the name of said Great Northern Railway Company.

That the Charter of said Great Northern Railway Company provides as follows: "That all of the affairs and business of said company shall be conducted by or under the direction of a board of directors, and they are authorized, for the purposes specified in this act, to make and establish regulations and by-laws, and to do all things necessary to be done and not inconsistent with the Constitution and Laws of the United States, or the Laws of this Territory, or this Act."

Your Oratrix further alleges that the Board of Directors of said Great Northern Railway Company, at the time of the organization of the Northern Securities Company, hereinafter referred to, to-wit, 26
on or about the 13th day of November, 1901, was and now is composed of the following named persons, to-wit: James J. Hill, James N. Hill, Samuel Hill, William P. Clough, Edward Sawyer, M. D. Grover, Jacob H. Schiff and Henry W. Cannon; and at said date the managing or executive officers of said corporation were and now are as follows: President, James J. Hill; Vice President, William P. Clough; Secretary and Assistant Treasurer, E. T. Nichols. That on said last named date said Great Northern Railway Company had issued, and there was then outstanding, a total of One Hundred and Twenty-five Million Dollars, par value, of the capital stock of said corporation, and your Oratrix is informed and believes, and upon information and belief alleges, that said James J. Hill was on said last named date the owner of or in possession 27
and control of, or had subject to his direction and disposition, more than a majority of said capital stock so outstanding.

VI.

That the Northern Pacific Railroad Company was formerly a corporation organized and existing under and by virtue of an Act of the Congress of the United States, entitled, "An Act granting

land to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific Coast, by the northern route." Approved July 2nd, 1864; and a joint resolution of Congress extending the time for the completion of said railroad until July 1st, 1868; and a joint resolution granting the consent of Congress provided for in Section Ten of said Act, incorporating the
28 Northern Pacific Railroad Company; approved March 1st, 1869; the joint resolution of Congress granting the right of way for the construction of a railroad from Portland, Oregon, to a point west of the Cascade Mountains in Washington Territory, approved April 1st, 1869; the joint resolution of Congress authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road, and to secure the same by mortgage, and for other purposes, approved May 31st, 1870. And Complainant asks leave to refer to and have each of said acts and resolutions considered as though fully herein set forth.

That under and in pursuance of the said several acts and joint resolutions of Congress, the Northern Pacific Railroad Company constructed and put into operation, prior to January 1st, 1890,
29 all of its main line of road, extending from Ashland, in the State of Wisconsin, westward across the States of Minnesota, North Dakota, Montana and Idaho, and in the State of Washington to Walla Walla Junction; also all that other part of its main line of railroad extending from Portland, Oregon, to Tacoma, Washington; also the whole of its Cascade Branch, extending from Pasco Junction, in the State of Washington, to Tacoma, in the State of Washington.

That said Northern Pacific Railroad Company had also, prior to said first day of January, 1880, acquired and then owned all of the capital stock of the following named railroad companies and corporations, to-wit: The St. Paul and Northern Pacific Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then owned a railroad extending from St. Paul,
30 Minnesota, to Brainerd, Minnesota; and from Little Falls, Minnesota, to Staples, Minnesota; also of the Duluth and Manitoba Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then owned a line of railroad extending from Winnipeg Junction, Minnesota, via Red Lake Falls, Minnesota, to the western boundary line of said state, and thence to Grand Forks, North Dakota; and thence to the international bound-

ary line between the State of North Dakota and Canada; also of the Duluth, Crookston and Northern Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then owned a railroad extending from Fertile Junction, Minnesota, through Crookston to Carthage Junction, Minnesota; also of the Little Falls and Dakota Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then 31
owned a railroad extending from Little Falls, Minnesota, to Morris, Minnesota; also of the Northern Pacific, Fergus Falls and Black Hills Railroad Company, a corporation organized under the laws of the State of Minnesota, and which owned a line of railroad extending from Wadena, Minnesota, thence westerly to the western boundary line of the state; and thence to North Dakota points; also all of the capital stock of various railroad corporations or companies organized in the States of North Dakota, South Dakota, Montana and Washington, which owned and operated various railway lines in said states respectively. The said railway lines built by said companies within the State of Minnesota, as well as those built outside of the State of Minnesota, and the capital stock of the corporations so building said lines, and owned by said Northern Pa- 32
cific Railroad Company, as hereinbefore alleged, were operated, managed and controlled by said Northern Pacific Railroad Company as a system of railway or railways extending from and between various points in the State of Minnesota, more specifically hereinafter referred to, through said state and thence to the Pacific Coast; and aggregate about four thousand five hundred miles of railway.

VII.

That the Northern Pacific Railway Company is now and for upwards of five years last past has been a corporation organized under and by virtue of the laws of the State of Wisconsin; said corporation being organized during the year 1895. That thereafter and prior to the time said Northern Pacific Rail- 33
way Company became possessed of and the owner of the railway lines and property formerly owned and operated by said Northern Pacific Railroad Company, said Northern Pacific Railway Company filed with the Secretary of State of the State of Minnesota, in accordance with the terms and provisions of the laws of said State of Minnesota, a duly authenticated and certified copy of its Articles of Incorporation, and thereupon said Northern Pacific Railway

Company became a corporation of and within the State of Minnesota, and subject to all of the laws, regulations and provisions of said State of Minnesota relating to railway or railroad corporations, including those acts or parts of acts hereinafter specifically pleaded or referred to.

34 That under the Charter or Articles of Incorporation of said Northern Pacific Railway Company, the powers of said company are delegated to and exercised by a board of fifteen directors; that during the month of April, 1901, the following named persons constituted and now are the members of the Board of Directors of said last named company: James J. Hill, Robert Bacon, George F. Baker, E. H. Harriman, H. McK. Twombly, Brayton Ives, D. Willis James, John S. Kennedy, Daniel S. Lamont, Charles S. Mellen, Samuel Rea, William Rockefeller, Charles Steele, James Stillman and Eben B. Thomas. That on the 13th day of November, 1901, J. Pierpont Morgan, with certain other persons to your Oratrix unknown, but who were acting with said Morgan, owned and had in their possession, or held under and subject to their control and disposition, upwards of eighty-five per cent. of the total 35 capital stock of said Northern Pacific Railway Company then outstanding. That the total amount of capital stock of said Northern Pacific Railway Company then issued and outstanding amounts to One Hundred and Fifty-five Millions of Dollars, par value, Seventy-five Millions of Dollars of which was preferred stock subject to retirement as provided by the Articles of Incorporation and agreement under which the same was issued.

That during the year 1893, the said Northern Pacific Railroad Company became insolvent, and all of the property of said last named company, of whatever kind or character, was duly placed in the hands of receivers appointed for that purpose by the Circuit Court of the United States for the Eastern District of Wisconsin; and thereafter in proceedings ancillary thereto, by the various circuit courts of the United States in whose jurisdictions said prop- 36 erty was located. That after said Northern Pacific Railway Company had filed its said Articles of Incorporation in the State of Minnesota and had become subject to its laws, and during the year 1896, said Northern Pacific Railway Company duly purchased and became the owner of the entire railroad properties and railway lines, including the right of way, rolling stock and capital stock, formerly owned by said Northern Pacific Railroad Company; and immediately thereafter entered into the possession thereof; and

at all times since has continuously owned and operated each and all of the said lines of railway so situated within the State of Minnesota, and which connect the cities of St. Paul and Minneapolis and Duluth, and various other villages and cities within the State of Minnesota, and connect with the lines of railway outside of said State of Minnesota.

That during the year 1899, said Northern Pacific Railway Company purchased, and ever since has owned and operated, a line of railway extending from the cities of St. Paul and Minneapolis to Duluth, Minnesota; that said last named line parallels and is a competing line of railway for both freight and passenger traffic with the line of railway between said Minneapolis and St. Paul and Duluth, hereinbefore described, and which is owned by said Eastern Railway Company of Minnesota, but operated, controlled and managed by said Great Northern Railway Company as a part of the system of said last named company, as hereinbefore alleged.

That the lines of railway now owned and operated by said Great Northern Railway Company within the State of Minnesota are parallel and competing lines for freight and passenger traffic with the lines of railway now owned, operated and controlled by said Northern Pacific Railway Company within the State of Minnesota, between the following points in said state, to-wit: The Cities of St. Paul and Minneapolis and the City of Duluth, Minnesota, and the various cities and villages between said points; also between the Cities of St. Paul and Minneapolis and Crookston, Minnesota, by way of Fergus Falls, and the various cities and villages between said points; also between the Cities of St. Paul and Minneapolis and Crookston by way of Breckenridge, and the towns and cities between said points; and also between the Cities of Duluth and Crookston, and the cities and villages between said points, as well as the country adjacent to the lines of railway between each and all of said cities; and the said lines of railway owned, operated and controlled by said Great Northern Railway Company and also the lines of railway owned, operated and controlled by said Northern Pacific Railway Company which connect with the said lines of railway owned, operated and controlled by each of said companies respectively within the State of Minnesota, are parallel and competing lines through the States of North Dakota, Montana, Idaho and Washington to Puget Sound on the Pacific Coast for passenger and freight traffic. That during all of the time

aforesaid each and all of said lines of railway were maintained and operated by said respective companies as common carriers of freight and passengers within the State of Minnesota; and that said companies are now, and for upwards of eleven years last past have been, the only railway companies owning or operating lines of railway crossing the State of Minnesota and connecting the Pa-
40 cific Ocean by rail with points in Minnesota; also the only lines of railway traversing east and west the northern tier of states of the United States lying west of the Mississippi river, and connecting such territory and territory tributary thereto by rail with the Pacific Ocean; and, with one exception, the only lines of railway crossing the north half of the State of Minnesota in any direction.

VIII.

That the Chicago, Burlington and Quincy Railway Company is and, for many years last past has been, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois; and, as such, until the disposition of its capital stock as
41 hereinafter alleged, owned, operated and controlled an extensive system of railway lines extending from the City of Chicago, in the State of Illinois, in a westerly direction to the City of Denver, in the State of Colorado; and also in a westerly and northwesterly direction from said City of Chicago, to the City of Billings, in the State of Montana; which last named point is a junction and competitive point for freight and passenger traffic with said Northern Pacific Railway Company; and also from said City of Chicago to the Cities of St. Paul and Minneapolis, in the State of Minnesota; and in addition to said main lines, owned, operated and controlled a large number of connecting and tributary lines, extending to various cities and towns in the States of Illinois, Iowa, Missouri, Wisconsin, Minnesota, Nebraska, Kansas, Wyoming and Montana. That the total mileage of said railway company is approximately
42 Seven Thousand Four Hundred Miles. That during the year 1901, the said Great Northern Railway Company and said Northern Pacific Railway Company jointly purchased ninety-eight per cent. of the total capital stock of said Chicago, Burlington and Quincy Railway Company, aggregating approximately One Hundred and Seven Millions of Dollars, par value, and now own the same; and issued in payment therefor the joint bonds of said Great Northern and Northern Pacific Railway Companies, payable in twenty years from

the date thereof, and bearing interest at the rate of four per cent. per annum, payable semi-annually. That said Great Northern and Northern Pacific Railway Companies issued and delivered in exchange for each One Hundred Dollars in amount of said Chicago, Burlington and Quincy Railway Company stock Two Hundred Dollars in amount of the said bonds.

That under and by virtue of the purchase of said stock the 43
joint ownership and control of the said Chicago, Burlington and Quincy Railway Company is vested in and ever since has been exercised by the said Great Northern and Northern Pacific Railway Companies.

IX.

That the defendant Northern Securities Company is a corporation organized, existing in and doing business under and by virtue of the laws of the State of New Jersey. That said corporation was organized on the 13th day of November, A. D. 1901, with its principal office for the transaction of its business located at the 44
City of Hoboken, County of Hudson and State of New Jersey and is a citizen of the State of New Jersey.

That the Articles of Incorporation of said Northern Securities Company are as follows:

CERTIFICATE OF INCORPORATION

OF

NORTHERN SECURITIES COMPANY.

45

STATE OF NEW JERESY, SS.:

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the Act of the Legislature of the State of New Jersey, entitled An Act Concerning Corporations (Revision of 1896), and the Acts amendatory thereof and supplemental thereto, do hereby certify as follows:

First: The name of the corporation is NORTHERN SECURITIES COMPANY.

Second: The location of its principal office in the State of New Jersey is at No. 51 Newark street, in the City of Hoboken, County of Hudson. The name of the agent therein, and in charge thereof, upon whom process against the corporation may be served, is
46 Hudson Trust Company. Such office is to be the registered office of the corporation.

Third: The objects for which the corporation is formed are:

(1) To acquire by purchase, subscription or otherwise, and to hold as investment, any bonds or other securities or evidences of indebtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country.

(2) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds or other securities or evidences of indebtedness created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or
47 of any other State, Territory or country, and, while owner thereof, to exercise all the rights, powers and privileges of ownership.

(3) To purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country; and, while owner of such stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(4) To aid in any manner any corporation or association of which any bonds, or other securities or evidences of indebtedness or stock are held by the corporation; and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or other securities or evidences of indebtedness or stock.

48 (5) To acquire, own and hold such real and personal property as may be necessary or convenient for the transaction of its business.

The business or purpose of the corporation is from time to time to do any one or more of the acts and things herein set forth.

The corporation shall have power to conduct its business in other States and in foreign countries, and to have one or more offices out of this State, and to hold, purchase, mortgage and convey real and personal property out of this State.

Fourth: The total authorized capital stock of the corporation is Four Hundred Million Dollars ($400,000,000), divided into four million (4,000,000) shares of the par value of one hundred dollars ($100) each. The amount of the capital stock with which the corporation will commence business is thirty thousand dollars.

Fifth: The names and postoffice addresses of the incorporators, and the number of shares of stock subscribed for by each (the aggregate of such subscriptions being the amount of capital stock with which this company will commence business) are as follows:

Name and Postoffice Address.	Number of Shares.
George F. Baker, Jr., 258 Madison Avenue, New York, New York.	100
Abram M. Hyatt, 214 Allen Avenue, Allenhurst, New Jersey.	100
Richard Trimble, 53 East Twenty-fifth Street New York, New York.	100

Sixth: The duration of the corporation shall be perpetual.

Seventh: The number of directors of the corporation shall be fixed from time to time by the by-laws; but the number if fixed at more than three, shall be some multiple of three. The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year; the directors of the second class for a term of two years; and the directors of the third class for a term of three years; and at each annual election the successors to the class of directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

In case of any increase of the number of the directors the additional directors shall be elected as may be provided in the by-laws, by the directors or by the stockholders at an annual or special meeting, and one-third of their number shall be elected for the then unexpired portion of the term of the directors of the first class, one-third of their number for the unexpired portion of the term of the directors of the second class, and one-third of their number for the

unexpired portion of the term of the directors of the third class, so that each class of directors shall be increased equally.

In case of any vacancy in any class of directors through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority of the Board of Directors, may elect a successor to hold office for the unexpired portion of the term
52 of the director whose place shall be vacant, and until the election of a successor.

The Board of Directors shall have power to hold their meetings outside the State of New Jersey at such places as from time to time may be designated by the by-laws, or by resolution of the Board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number of the directors.

As authorized by the Act of the Legislature of the State of New Jersey passed March 22, 1901, amending the 17th section of the Act Concerning Corporations (Revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or required their consent
53 in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole Board of Directors. Any other officer or employe of the corporation may be removed at any time by vote of the Board of Directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws, or by vote of the Board of Directors.

The Board of Directors, by the affirmative vote of a majority of the whole Board, may appoint from the Directors an executive committee, of which a majority shall constitute a quorum; and to such
54 extent as shall be provided in the by-laws, such committee shall have and may exercise all or any of the powers of Board of Directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The Board of Directors may appoint one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers

of the president, of the treasurer, and of the secretary, respectively.

The Board of Directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the corporation; to determine whether any, and, if any, what part of any accumulated profits shall be declared in dividends and paid to the stockholders; to determine the time or times for the declaration and the payment of dividends; and to direct and to determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the Board of Directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of the capital stock of the corporation, to such extent and in such manner and upon such terms as the Board of Directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the capital stock of the corporation to the extent authorized by law. 55

The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by statute of the State of New Jersey, or authorized by the Board of Directors or by a resolution of the stockholders. 56

The Board of Directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the Board of Directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

IN WITNESS WHEREOF, We have hereunto set our hands and seals, the twelfth day of November, 1901. 57

GEO. F. BAKER, JR. (L. S.)

ABRAM M. HYATT, (L. S.)

RICHARD TRIMBLE, (L. S.)

Signed, sealed and delivered
in presence of
GEO. HOLMES.

STATE OF NEW YORK,
County of New York,
MANHATTAN. } ss:

BE IT REMEMBERED, That on this twelfth day of November, 1901, before the undersigned, personally appeared George F. Baker,
58 junior, Abram M. Hyatt, Richard Trimble, who, I am satisfied, are the persons named in and who executed the foregoing certificate; and I, having first made known to them, and to each of them, the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

GEO. HOLMES,
Master in Chancery of New Jersey.

Endorsed,

"Received in the Hudson Co., N. J., Clerk's Office, Nov 13, A. D. 1901, and recorded in Clerk's Record No. ....., on Page .....
"MAURICE J. STACK, Clerk."

"Filed Nov. 13, 1901, George Wurts, Secretary of State."

That said Northern Securities Company was incorporated
59 at the instigation and request, and under the direction of, James J. Hill and William P. Clough, and certain other stockholders of said Great Northern Railway Company to your Oratrix unknown, who were co-operating with said James J. Hill and William P. Clough, and who, with said Hill and Clough, owned and controlled, or have the disposition and management, as hereinafter alleged, of a very large majority of the capital stock of said Great Northern Railway Company, and J. Pierpont Morgan and certain other stockholders of said Northern Pacific Railway Company, to your Oratrix unknown, who were co-operating with said Morgan, and who, with said Morgan, owned and controlled, or have the disposition and management of a very large majority of the capital stock
60 of said Northern Pacific Railway Company. That said Northern Securities Company was formed by George F. Baker, Jr., and Richard Trimble, of the City of New York and State of New York, and Abram Hyatt, of Allenhurst, in the State of New Jersey, who adopted the said Articles of Incorporation. That said three last named parties had no interest in said corporation other than the formation of the same for and at the request of said James J. Hill, William P. Clough, J. Pierpont Morgan, and their several as-

sociate stockholders of said Great Northern Railway Company and said Northern Pacific Railway Company, as above alleged, acting in concert with said parties.

That said James J. Hill, William P. Clough and J. Pierpont Morgan, who, with their associates, did on said 13th day of November, 1901, and prior thereto, own and control a large majority of the capital stock of both said Great Northern Railway Company and said 61
Northern Pacific Railway Company, were prior to, and at the time of, the organization of said Northern Securities Company, almost continually in conference with each other and with a large number of other stockholders of said Great Northern Railway Company and said Northern Pacific Railway Company, but whose names are to your Oratrix unknown, considering such organization and the scheme and agreement herein referred to, and the means and manner by which the laws of Minnesota, hereinafter referred to, could be most successfully evaded or avoided, all of which facts were well known to the organizers of said Northern Securities Company, including the parties executing the said Articles of Incorporation. That said Northern Securities Company was organized solely for the purpose of carrying out and accomplishing the 62
designs, agreement and plans of said James J. Hill and J. Pierpont Morgan and their said associate stockholders, as herein set forth, and to effect a consolidation of the property, railway lines, corporate powers and franchises of said Great Northern and Northern Pacific Railway Companies respectively, through said defendant, the Northern Securities Company.

That prior to the organization of said Northern Securities Company, the said owners and holders of a large majority of the capital stock of said Great Northern Railway Company, as well as the owners and holders of a large majority of the capital stock of said Northern Pacific Railway Company, as a part of the scheme or plan herein alleged, as well as a part of the plan and purpose of the organization of said Northern Securities Company, entered into a mutual agreement or arrangement, the exact terms of which are 63
unknown to your Oratrix, but which is in substance as follows:

The said owners of a large majority of the capital stock of said Great Northern Railway Company and said Northern Pacific Railway Company, mutually agreed with each other and certain persons who thereafter became the officers and directors of said Northern Securities Company to transfer or cause to be transferred to said Northern Securities Company in

exchange for the capital stock of said last named company substantially all of the capital stock of said Great Northern Railway Company and said Northern Pacific Railway Company, respectively; the said capital stock of the Great Northern Railway Company to be transferred to and exchanged for the capital stock of the said Northern Securities Company on the basis of one share
64 of the capital stock of the Great Northern Railway Company for one and 80-100 shares of the capital stock of said Northern Securities Company, and one share of the common stock of said Northern Pacific Railway Company for one and 15-100 shares of the capital stock of said Northern Securities Company. The $75,000,000 of the preferred stock of said Northern Pacific Railway Company to be retired in accordance with the provisions of the Articles of Incorporation of said Northern Pacific Railway Company, and the conditions and agreements under which the same was issued; said retirement to take place on the 1st day of January, 1902. The funds for retiring said preferred stock to be raised by the issuance by said Northern Pacific Railway Company of its negotiable bonds, bearing date November 15th, 1901, of the aggre-
65 gate amount of Seventy-five Million Dollars, payable January 1st, 1907, in gold coin of the United States, with interest thereon at the rate of four per cent. per annum, payable semi-annually in like gold coin, from and after January 1st, 1902. The said bonds, however, to be convertible at the option of either the holders thereof, or said Railway Company, into shares of the common stock of said Northern Pacific Railway Company at the rate of one share of stock for each One Hundred Dollars of the principal sum of such bonds, and the said common stock, when so taken in exchange for such bonds, to be converted into stock of said Northern Securities Company upon the basis of one share for each one and 15-100 shares of stock of said Northern Securities Company.

That said preferred stock could only be retired by resolution
66 of the Board of Directors of said Northern Pacific Railway Company; that a very large majority of said preferred stock was owned by certain individuals who were opposed to the agreement and plan herein referred to relative to turning over the management and control of said Northern Pacific Railway Company to said Northern Securities Company, and the holding of its stock by said Northern Securities Company; that the owners of said preferred stock so opposed to said agreement and plan were also

owners of sufficient of the common stock of said Northern Pacific Railway Company to give them a small majority of the total capital stock of said Northern Pacific Railway Company; thus making it necessary, in order to carry out the plan and agreement herein set forth and to vest the management and control of said Northern Pacific Railway Company in said Northern Securities Company in the manner and for the purposes herein alleged, to retire said preferred stock; all of which was well known to the Board of Directors of said Northern Pacific Railway Company and to said J. Pierpont Morgan and his associate stockholders of said Northern Pacific Railway Company, as well as said Northern Securities Company. 67

That on or about the 13th day of November, 1901, the Board of Directors of said Northern Pacific Railway Company took such official action as was necessary to retire said preferred stock upon the basis and in accordance with the plan and agreement herein set forth; and thereafter said preferred stock was retired by the issuance of the convertible bonds to the amount and in the manner herein alleged. That immediately after the retirement of said preferred stock, said Northern Pacific Railway Company, acting through its Board of Directors and executive officers, exercised its right and option of declaring said bonds to be convertible into shares of the common stock of said Northern Pacific Railway Company, and thereupon the same were so converted and the common stock of said Northern Pacific Railway Company issued in exchange therefor, upon the basis and for the purposes herein alleged. That in order to prevent the persons who owned said preferred stock, and who were opposed to the carrying out of the plan and agreement herein referred to, from acquiring a like control of the common stock, it was provided that the $75,000,000 of common stock into which the said bonds were convertible could only be subscribed for and taken by holders of the then outstanding $80,000,000 of the common capital stock of said Northern Pacific Railway Company; each share of said common stock then outstanding entitling the owner and holder thereof to take an additional seventy-five-eightieths of a share of said $75,000,000 additional common stock. That the retirement of said preferred stock and the conversion of the said bonds into common stock of said Northern Pacific Railway Company, and the exchange of said common stock for stock of said Northern Securities Company, as herein alleged, 68 69

were each and all a part of the agreement, plan and scheme of said J. Pierpont Morgan and his said associate stockholders of said Northern Pacific Railway Company who then and there owned and controlled a large majority of the then outstanding common stock of said Northern Pacific Railway Company, under and by which the
70 complete management and control of said Northern Pacific Railway Company was to be, and was thereafter, turned over to and vested in said Northern Securities Company in order that said Northern Pacific Railway Company, its property and franchises, might be in effect consolidated with the property and franchises of said Great Northern Railway Company, as herein alleged. That said James J. Hill and his associate stockholders of said Great Northern Railway Company had full knowledge of and assisted in retiring said preferred stock for the purposes and objects herein alleged. That as a part of said agreement and plan entered into between said James J. Hill and his associate stockholders and said J. Pierpont Morgan and his associate stockholders, each and all of whom were then, and are now, acting in concert for the purpose of evading and violating the Laws of the State of Minnesota, in the
71 manner, for the purposes, and with the object and design herein set forth, and in furtherance of said purposes and design, and to avoid the effect of any litigation which might be instituted to defeat the consummation of the agreement, plan and scheme herein referred to of vesting the complete management and control of the railway lines, properties and franchises of said Great Northern and Northern Pacific Railway Companies in said defendant Northern Securities Company, said parties further undertook and agreed with each other and the persons who thereafter became the officers and directors of the defendant Northern Securities Company that pending the delivery and transfer of a majority of the capital stock of said Great Northern Railway Company to said Northern Securities Company, the same should be held by or under the control of
72 some person or corporation to your Oratrix unknown; and that pending such delivery it was mutually agreed between said Hill and his associate stockholders and said Morgan and his associate stockholders and the persons who thereafter became the directors and officers of the defendant, as well as the person or corporation so temporarily holding said stock that the same should be held during said period for the purposes above set forth in trust for the use and benefit of the defendant, the Northern Securities Com-

pany; and that during such time the parties so holding said stock should attend and vote the same at all meetings of the stockholders of said Great Northern Railway Company, in the interests of the defendant, and as directed by the Board of Directors of said Northern Securities Company or the executive committee thereof, or in unison with the stock of said railway companies, actually assigned to and held by the defendant. That said 73
Northern Securities Company has not purchased, and does not intend to purchase the stock of either of said railway companies, except by issuing its stock in exchange for and in lieu of the stock of said railway companies on the basis and in the manner and for the purposes herein alleged.

That for the unlawful purposes aforesaid the said Northern Securities Company, by circular letter heretofore issued to the public, has offered and is still offering to issue and exchange for the capital stock of the said Great Northern and Northern Pacific Railway Companies, capital stock of said Northern Securities Company to the amount of One Hundred and Eighty Dollars par value thereof for each share of capital stock of said Great Northern Railway Company and to the amount of One Hundred and Fifteen Dollars 74
par value thereof for each share of stock of said Northern Pacific Railway Company. And that the said Northern Securities Company is about to receive, on the basis aforesaid, and will, unless enjoined therefrom, receive, hold and hereafter control all the capital stock of said Great Northern and Northern Pacific Railway Companies.

X.

That the organization of said Northern Securities Company in the manner hereinbefore alleged, and the making of said agreement or arrangement hereinbefore referred to, are each and all a part of a scheme or plan on the part of said James J. Hill and his said associate stockholders of the Great Northern Railway Company, and J. Pierpont Morgan and his said associate holders of 75
the stock of said Northern Pacific Railway Company, under and by which the said two last named Railway Companies are to be in effect consolidated, and the complete management and control of the business affairs of said corporations respectively placed in one body and under the direction and control of one man or one Board of Directors, through and by means of said defendant. That pursuant to said plan, agreement and arrangement, and in

consummation thereof, and for the purpose of placing the complete management and control of said Great Northern Railway Company and said Northern Pacific Railway Company under one management, and for the purpose of establishing, in effect, a consolidation of said railway companies, together with said railway lines and properties, in and through said defendant, the said J. Pierpont
76 Morgan and his associate stockholders have actually assigned and delivered to said Northern Securities Company upwards of 85 per cent. of the total capital stock of said Northern Pacific Railway Company; and your Oratrix alleges, on information and belief, that said James J. Hill and his associate stockholders of said Great Northern Railway Company, have also actually assigned and delivered to said Northern Securities Company upwards of 85 per cent. of the capital stock of said Great Northern Railway Company. That the sole purpose, object and effect of the transfer of said stock by said James J. Hill and his said associates and said J. Pierpont Morgan and his said associates to said Northern Securities Company was and is to transfer to and vest in said Defendant Northern Securities Company the complete management and
77 control of the respective lines of railway and railway properties of each of said Railway Companies within and without the State of Minnesota, and to place the complete management and control of the same, and the power to dictate the policy of each of said corporations, as well as the power and authority to fix rates and charges for the transportation of both freight and passengers within the State of Minnesota, as well as without said State, in the hands of and under the control of one party or Board of Directors, and thereby create, foster and perpetuate a monoply in railway traffic in the State of Minnesota.

That the purpose, object and effect of the incorporation of the defendant and the receipt by it of a controlling amount of the capital stock of the said Northern Pacific and Great Northern Rail-
78 way companies, as well as each act of the officers and Board of Directors thereof, in entering into, adopting or executing the agreement or plan herein set forth, including the issuance and exchange of the capital stock of the Northern Securities Company for the stock of the said Northern Pacific and Great Northern Railway Companies on the basis hereinbefore set forth, was and is to place the said railway companies and the property and franchises thereof under a single management, and enable a single

party or body of men acting as the Board of Directors of the said Northern Securities Company, or such Executive Committee as they may designate, to fix all rates and charges for the transportation of passengers and freight over any and all the lines of railway of each of said companies within the State of Minnesota; to determine what trains shall be operated over each or any of the lines of railway of each of said railway companies, and to remove all competition in freight or passenger traffic over said parallel and competing lines, and prevent the building of lines into new territory as well as into the territory now reached by only one of said lines of railway; that the purpose of said agreement and of the parties thereto was the creation of a trust or the formation of a combination by which a monopoly of railway traffic in Northern Minnesota and elsewhere will be perfected; that the defendant company was organized for, and is to be used as a medium through and by which this unlawful agreement, purpose and object can, and, if not enjoined, will be accomplished; that this agreement and the consummation thereof is in restraint of trade, tends to create a monopoly in railway traffic and is against public policy, and void. 79

That the holders of a large majority of the capital stock of both said Great Northern and Northern Pacific Railway Companies had knowledge of, consented to, and assisted in carrying out the agreement, arrangement and scheme herein set forth by which a large majority of the capital stock of each of said Railway Companies was to be exchanged for the capital stock of said Northern Securities Company upon the basis and for the purposes herein set forth; and the said stockholders of said Great Northern and Northern Pacific Railway Companies so consenting to, taking part and assisting in the formation of said Northern Securities Company and the perfecting of the agreement and scheme herein set forth, constitute all of the stockholders of said Northern Securities Company; and the Board of Directors and executive officers of said Northern Securities Company hereinafter named have been selected from and elected by such stockholders of said Great Northern and Northern Pacific Railway Companies. 80 81

That under the Articles of Association of said Northern Securities Company, its corporate powers and entire business management is vested in a Board of Directors consisting of such number, as shall be fixed from time to time, by the by-laws of said corporation, and the Board of Directors itself is authorized to make such

by-laws as it deems best, and from time to time, to alter, amend or repeal any by-laws. That the Board of Directors of said company thereby has power to determine its own number, and to adopt rules and regulations for its own conduct and the conduct of the affairs of said corporation. The Articles of Association further
82 provide that said Board of Directors may appoint an Executive Committee in the manner provided by the by-laws of the Company, which committee shall exercise all the powers and duties of said Board of Directors.

That on or about the 14th day of November, A. D., 1901, the following named persons were elected as and now constitute the Board of Directors of said Northern Securities Company, to-wit: For the term of one year, James J. Hill, George F. Baker, Daniel S. Lamont, James Stillman and N. Terhune; for the term of two years, Samuel Thorne, Charles E. Perkins, Jacob H. Schiff and William P. Clough; for the term of three years, John S. Kennedy, D. Willis James, E. T. Nichols, Robert Bacon and E. H. Harriman. That on the 15th day of November, A. D., 1901, said Board of Directors met and elected the following executive officers of said
83 Company, to-wit: President, James J. Hill; First Vice-President, John S. Kennedy; Second Vice-President, George F. Baker; Third Vice-President, D. Willis James; Fourth Vice-President, William P. Clough; Secretary and Treasurer, E. T. Nichols.

Complainant further alleges that said James J. Hill and said William P. Clough were on said last named date the President and Vice-President respectively of said Great Northern Railway Company; and both were members of the Board of Directors of said last named Company. That said E. T. Nichols was on said date and now is the Secretary and Assistant Treasurer of said Great Northern Railway Company. That said James J. Hill, and his said associates, either own or have in their possession or under their control a large majority
84 of the capital stock of said Great Northern Railway Company. That said James J. Hill, Robert Bacon, George F. Baker, E. H. Harriman, D. Willis James, John S. Kennedy, D. S. Lamont and James Stillman were on said 14th day of November, 1901, and now are members of the Board of Directors of said Northern Pacific Railway Company, and constitute a majority of the Board of Directors of said named Company.

That said James J. Hill and his associate directors and officers

of said Northern Securities Company own and control a majority of the capital stock of said last named Company; that during the month of December, 1901, said Northern Securities Company, through its directors and executive officers, began dictating the policy and management of said Northern Pacific as well as said Great Northern Railway Company, and ever since has been and now is directing and managing the business and property of both 85
said Great Northern and Northern Pacific Railway Companies, and determining and enforcing freight and passenger rates on many of the lines of railway of said Companies in the State of Minnesota, together with the manner and means of handling the freight and passenger business of said companies on such lines of railway, and will continue so to do unless enjoined as herein prayed.

That said Northern Securities Company has no authorized agent or representative within the State of Minnesota, on whom a summons or other process in any legal proceeding may be served.

That the massing and concentration of said railway properties and the control and management thereof in the Defendant Company in the manner hereinbefore outlined, tends to and does 86
create a monopoly in railway traffic in the State of Minnesota, and tends to and does deprive the State of Minnesota and the citizens thereof of the privilege of competition in fixing charges and rates of transportation for a large amount of freight transported annually over the lines of railway of each of said railway companies, between stations upon the lines of railway of both said companies within the State of Minnesota.

That it has ever been a part of the settled and public policy of the State of Minnesota to prohibit therein, in any way, the consolidation in any manner of competing and parallel lines of railway; and to this end the Legislature of the State of Minnesota did, in the year 1874, pass the following enactment, which ever since has remained and now is a part of the Statute Law of the State of Minnesota, known as Chapter 29 of the General Laws of 1874, to- 87
wit:

"Section 1. No railroad corporation, or the lessees, purchaser or managers of any railroad corporation, shall consolidate the stock, property or franchise of such corporation with, or lease or purchase the works or franchise of, or in any way control any other railroad corporation owning or having under its control a

parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line, and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues.

88 Sec. 2. This act shall take effect and be in force from and after its passage.

Approved March 9, 1874."

That in the year 1881, the Legislature of the State of Minnesota passed the following enactment, which ever since has remained and now is a part of the Statute Law of the said State and known as Chapter 94 of the General Laws of 1881, to-wit:

"Section 3. No railroad corporation shall consolidate with, lease or purchase, or in any way become the owner of or control any other railroad corporation or stock, franchises, rights or property thereof, which owns or controls a parallel or competing line.

Sec. 4. This act shall take effect and be in force from and
89 after its passage.

Approved March 3rd, 1881."

That said Northern Securities Company is a Railroad Corporation within the meaning of the laws of the State of Minnesota; and the purpose, object and design of the said organizers and promoters of said Northern Securities Company, both in the organization thereof and in the making and carrying out of the said plans, agreement and designs hereinbefore referred to, was and is to violate the said legislative enactments of the State of Minnesota, and to evade and escape the provisions thereof; and it is the purpose, intent and design of said corporation, its stockholders, directors, executive committee, officers, agents and representatives, to violate the said legislative enactments, and to evade and escape the terms and provisions therof, and effect a consolidation of said
90 railway corporations and properties as herein alleged. That each and all the said acts are violations and evasions of the said Laws and the settled public policy of the State of Minnesota, and unless said parties are enjoined will cause the State of Minnesota irreparable injury.

That for many years last past it has been a part of the settled policy of the State of New Jersey to permit the consolidation of

only such lines of railroad as are or can be connected so as to form continuous lines of railroad, and not to permit the consolidation of parallel or competing lines; and to that end, in the year 1885, the Legislature of the State of New Jersey enacted a law which permits the consolidation of such lines as shall or may form connecting or continuous lines of railroad.

Your Oratrix is informed and believes, and upon information 91
and belief alleges, that defendant is not the owner of any property or stock or securities of any corporation, except as above set forth, and is not engaged in any business whatever except such as is incidental to the ownership of such stock and the general management and control of said Great Northern and Northern Pacific Railway Companies and the railway lines and properties thereof.

Your Oratrix further alleges that if the defendant is permitted to control and manage the affairs of said Great Northern and Northern Pacific Railway Company, in the manner hereinbefore alleged or otherwise, all competition between them will forever cease, and a monopoly in railway traffic in Minnesota be created, to the great and permanent and irreparable damage and injury to the State of Minnesota and to the people thereof, and in 92
violation of its laws.

That your Oratrix has and can have, no other adequate remedy or relief by action at law, or except as herein prayed for in equity.

To the end therefore, that the defendant, the Northern Securities Company may, if it can, show cause why your Oratrix should not have the relief herein prayed for, and that it may be compelled to answer all and singular the premises, and all matters and things herein stated, as fully and particularly as if they were here again repeated, and said company thereunto interrogated, and that the defendant may be required to answer without oath, its answer under oath being hereby expressly waived; and that the defendants may by the decree of this court be perpetually enjoined and restrained:

First: From voting at any meeting of the stockholders of either 93
said Great Northern or Northern Pacific Railway Company any of the capital stock of either of said companies by any means or in any manner whatsoever, and from attending, by reason of such ownership, possession or control of stock, either through its officers or by proxy, or in any other manner, any meeting of the stockholders of either of said companies.

Second: That the defendant, its stockholders, officers, directors, or the executive committee thereof, its attorneys, representatives, agents or servants, and each of them, be enjoined and restrained from in any way aiding, advising, directing, interfering with or in any way taking part, directly or indirectly, in any manner whatsoever, in the management, control or operation of any of the lines
94 of railway of either of said companies; or in the management or control of the affairs of either of said companies.

Third: That the said defendant, its officers, attorneys, representatives, agents or servants, including its Board of Directors, or any of its members as such, be enjoined and restrained from exercising any of the powers or performing any of the duties, or in any manner acting as a representative, officer, member of the Board of Directors or employe, of either said Great Northern or Northern Pacific Railway Company, or in any way exercising any management, direction, or control over the same.

Fourth: That said defendant, its stockholders, directors, and other officers, representatives and agents, be enjoined and restrained from doing any and all acts and making any arrangements or combinations by contract or otherwise having for their object, effect or result the consolidation or establishment of a joint man-
95 agement or control in any manner whatsoever of the said Great Northern and Northern Pacific Railway Companies, their lines of railway or properties.

Fifth: That the said defendant be enjoined from either directly or indirectly holding, owning or controlling any of the stock of either of said companies at one and the same time for any of the purposes or objects alleged in said bill, or otherwise.

Sixth: That in case it shall appear upon the hearing that the defendant owns or controls, or is acting in concert with the owners of, a majority of the capital stock of either of said railway companies, and owns or controls a minority of the stock of the other of said companies, then that the defendant, its officers, directors, agents, or representatives, be enjoined and restrained from receiving, acquiring or controling any additional capital stock of such
96 other railway company.

Seventh: And your Oratrix further prays the leave of this Court to amend this its bill of complaint, if amendment thereto shall become necessary, including the right to bring in other parties defendant for the purpose of giving force and effect to any decree that may be made by the Court herein.

And that Complainant be granted such other and further or different relief as the nature of this case may require, and as shall be agreeable to equity and good conscience.

MAY IT PLEASE YOUR HONORS: To grant unto your Oratrix a writ of subpoena issuing out of and under the seal of this Honorable Court, directed to the said defendant, the Northern Securities Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, and a citizen of the State of New Jersey as herein alleged, strictly commanding said defendant under a certain penalty, and on a cer- 97
tain day therein to be named, to be and appear before this Honorable Court to stand and abide by such order and decree as this Honorable Court may make in the premises. And to this end your Oratrix will ever pray.

WALLACE B. DOUGLAS,
Attorney General, State of Minnesota,
and Solicitor for Complainant.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

UNITED STATES OF AMERICA,)
State of Minnesota, (
DISTRICT OF MINNESOTA,)

Wallace B. Douglas, being duly sworn, upon oath says, he is 98
the Attorney General of the State of Minnesota, and that he has resided in the State of Minnesota during the past eighteen years; that he is well acquainted with the facts and circumstances set forth in the foregoing bill of complaint; that he has read the same and knows the contents thereof and that the same is true of his knowledge, except as to matters therein stated upon information and belief, and as to such matters he is informed and believes the same to be true.

.....

Subscribed and sworn to before me
this ..... day of January, A. D., 1902.

.....
Notary Public, Ramsey County, Minnesota.

99

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1901.

STATE OF MINNESOTA,

Complainant,

vs.

NORTHERN SECURITIES COMPANY,

Defendant.

SUGGESTIONS IN SUPPORT OF MOTION FOR LEAVE TO PRESENT AND FILE BILL OF COMPLAINT.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

W. B. DOUGLAS,
Attorney General,
Solicitor for Complainant.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1901.

STATE OF MINNESOTA, Complainant.

vs.

NORTHERN SECURITIES COMPANY, Defendant.

IN EQUITY.

Now comes the complainant, the State of Minnesota, by Wallace B. Douglas, its Attorney General, and moves the Court for leave to present and file the accompanying bill of complaint.

WALLACE. B. DOUGLAS,
Attorney General
and Solicitor for Complainant.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1901.

STATE OF MINNESOTA,

Complainant,

vs.

NORTHERN SECURITIES COMPANY,

Defendant.

IN EQUITY.

SUGGESTIONS IN SUPPORT OF MOTION FOR LEAVE TO PRESENT AND FILE BILL OF COMPLAINT.

Statement of Facts.

For a number of years past, the following provisions have been in force as a part of the statute law of the State of Minnesota, to-wit:

Chapter 29, General Laws 1874:

"Section 1. No railroad corporation, or the lessee, purchaser or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line, and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues.

"Sec. 2. This act shall take effect and be in force from and after its passage.

"Approved March 9, 1874."

Chapter 94, General Laws 1881:

"Section 3. No railroad corporation shall consolidate with, lease or purchase, or in any way become the owner of or control any other

railroad corporation or any stock, franchises, rights, or property thereof, which owns or controls a parallel or competing line.

"Sec. 4. This act shall take effect and be in force from and after its passage.

"Approved March 3, 1881."

Chapter 359, General Laws 1899:

"Section 1. Any contract, agreement, arrangement, or conspiracy, or any combination in the form of a trust, or otherwise, hereafter entered into which is in restraint of trade or commerce within this state, or in restraint of trade or commerce between any of the people of this state and any of the people of any other state or country, or which limits or tends to limit or control the supply of any article, commodity or utility, or the articles which enter into the manufacture of any article or [of] utility, or which regulates, limits or controls or raises or tends to regulate, limit, control or raise the market price of any article, commodity or utility, or tends to limit or regulate the production of any such article, commodity or utility, or in any manner destroys, limits, or interferes with open and free competition in either the production, purchase or sale of any commodity, article or utility is hereby prohibited and declared to be unlawful.

"That when any corporation heretofore or hereafter created, organized or existing under the laws of this state, whether general or special, hereafter unites in any manner with any other corporation wheresoever created, or with any individual, whereby such corporation surrenders or transfers, by sale or otherwise, in whole or in part, its franchise, rights or privileges or the control or management of its business to any other corporation or individual, or whereby the business or the management or control of business of such corporation is limited, changed or in any manner affected, and the purpose or effect of such union or combination is to limit, control or destroy competition in the manufacture or sale of any article or commodity, or is to limit or control the production of any article or commodity, or is to control or fix the price or market value of any article or commodity, or the price or market value of the material entering into the production of any article or commodity, or in case the purpose or effect of such union or combination is to control or monopolize in any manner the trade or commerce, or any part thereof, of this state, or of the several states, such union, combina-

tion, agreement, arrangement, or contract is hereby prohibited and declared to be unlawful.

"Sec. 3. Any coporation heretofore or hereafter created, organized or existing under the laws of this state which shall hereafter either directly or indirectly make any contract, agreement or arrangement, or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business, either as a corporation or as a part of any combination, trust or monopoly, except as to the final disposition of its property under the laws of this state. * * *

"Sec. 6. That for the purpose of carrying out the provisions of this act, any citizen of this state may, and *it is hereby declared to be the duty of the attorney general*, to institute, *in the name of the state*, proceedings in any court of competent judisdiction against any person, partnership, association or corporation who may be guilty of violating any of the provisions of section one (1) of this act, for the purpose of imposing the penalties imposed by this act, or securing the enforcement of section three (3) hereof. * * *

"Sec. 8. This act shall take effect and be in force from and after its passage.

"Approved April 21, 1899."

Said General Laws of 1874 and 1881, respectively, were before this Court in 1895, and held to be constitutional enactments of the State of Minnesota, and applicable to said Great Northern Railway Company.

See Pearsall vs. G. N. Ry. Co., 161 U. S. 646.

In that case the plaintiff in error, a stockholder of the Great Northern Railway Company, brought his suit to enjoin the consolidation of the Great Northern Railway Company with the Northern Pacific Railway Company, the two corporations referred to in the bill of complaint in this case. The Attorney General of the State of Minnesota, by leave of this Court, filed a brief in intervention, and such attempted consolidation was held to be in violation of the Laws of the State of Minnesota above referred to.

From the bill of complaint it appears that the defendant the Northern Securities Company, is a corporation created on the 13th day of November, A. D. 1901, under and by virtue of the laws of the State of New Jersey, and is a citizen of the State of New Jersey, and by its Articles of Incorporation, is authorized to

"acquire by purchase, subscription or otherwise, and to hold * * * any shares of capital stock created or issued by any other corporation or corporations of the State of New Jersey or of any other state, territory or country," and while the owner of such stock, to "exercise all the rights, powers and privileges of ownership including the right to vote thereon;" also, "*to aid in any manner any corporation or association of which any bonds or other securities or evidences of stock are held by such corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or any securities or evidences of indebtedness or stock.*"

It also appears from the bill of complaint that the Northern Securities Company was organized at the instigation and under the direction and control of the President and Vice President of said Great Northern Railway Company, acting in concert with the owners of a majority of the stock of said last named company, as well as with the holders of a majority of the stock of said Northern Pacific Railway Company. That prior to the organization of said Northern Securities Company the holders of a majority of the stock of said Great Northern and Northern Pacific Railway Companies respectively, and acting in concert with each other and the President of said Great Northern Railway Company, as well as the prospective officers and Board of Directors of said Northern Securities Company, agreed with each other to transfer to said Northern Securities Company, in exchange for its capital stock, upon an agreed basis of exchange, a large majority of the capital stock of said Great Northern and Northern Pacific Railway Companies respectively. That said Northern Securities Company was organized for the purpose and with the intention of effecting, and in order to effect, a consolidation of said Great Northern and Northern Pacific Railway Companies, together with their railway lines and properties. That the compact or agreement above referred to was entered into with the design and purpose of evading and violating the Laws of the State of Minnesota herein referred to; and for the purpose of creating a monopoly in railroad traffic, as well as to consolidate the parallel and competing lines of railway owned by each of said railway companies in the State of Minnesota, and the lines of railway extending westward therefrom to the Pacific Coast; thus placing the complete management and control of all of the railway lines of each of said companies, and the power to fix and regulate charges for freight and passengers, in a single man or body of men acting

as the executive head, or executive committee, of said Northern Securities Company. That after the incorporation of the Northern Securities Company the agreement above referred to was consummated by the delivery to the defendant of upwards of three-fourths of the capital stock of each of said railway companies.

It also appears that a Board of Fifteen Directors was elected by the stockholders of the Northern Securities Company, on or about the 14th day of November, A. D. 1901, and consists, with three exceptions, of the members of the Board of Directors of either said Great Northern or Northern Pacific Railway Companies. It also appears from the bill of complaint that a majority of the Directors of the Northern Pacific Railway Company were elected and thereafter qualified and are now acting as members of the Board of Directors of the said Northern Securities Company; and that the President of said Company was and now is the President of the said Great Northern Railway Company.

The proprietary interest under which the State of Minnesota claims the right to maintain this action, is set forth in said bill of complaint in paragraphs III. and IV. The bill also sets forth fully the grounds upon which the State claims the right to maintain this action by virtue of its sovereign powers for and in behalf of the citizens of the State; and the bill then prays for an injunction upon the several grounds set forth therein.

Points and Authorities.

The complainant bases its request for leave to file and present its bill of complaint upon Section 2 of Article III. of the Constitution of the United States, which grants original jurisdiction to this Court in all controversies between states and between a state and a citizen of another state; and also upon congressional enactment relating thereto, and found at Section 687, et seq. Revised Statutes of United States.

The right of a state to invoke the jurisdiction of this Court, to protect rights of a proprietary nature, in an action against citizens of sister states has long been at rest. There is, therefore, as we view the question, but one inquiry to be considered bearing on the question of jurisdiction, to-wit: Is the State of Minnesota so far interested, either in its individual or in its sovereign capacity, as to enable it to maintain this action in any court?

It appears from the bill of complaint, at paragraphs III. and IV., that the State of Minnesota owns upwards of three million acres of land within its limits, which is near to, or in the territory, alone traversed by the two railways in question; and that the State is dependent almost entirely upon those roads for the development

of this land, and the furnishing of transportation facilities to the same. That the value of these lands, and their salability will be greatly impaired by the consolidation referred to in the bill of complaint. It further appears that the State owns and maintains a State University, five normal schools, schools for the deaf, dumb, blind and feeble-minded, a State Training School, a school for dependent children, five hospitals for the insane, a State Prison and a State Reformatory; and necessarily pays a large amount of money annually to the two railroad companies whose properties are sought to be consolidated, for transporting supplies to such institutions, as well as for conveying inmates to and from such penal and charitable institutions. It further appears that the income of the State derived from taxation, for the maintenance of these institutions, as well as the performance of its executive, legislative and judicial functions, will be seriously impaired and interfered with by reason of such consolidation.

We, therefore, submit that the State of Minnesota is so far interested, in its individual capacity, in the subject matter of this action as to entitle it to maintain the same.

See Pennsylvania vs. Wheeling Bridge Co., 13 How. 519.

The Sate also claims the right to maintain this action in its sovereign capacity upon the ground that the acts charged in the bill are in violation of the rights of, and a direct injury to all of the people of the State; and upon the further ground that the controversy involves a violation of a remedial and constitutional enactment of the State, which the State is charged with the duty of enforcing.

This action falls clearly within the principles, as well as the philosophy, of Missouri vs. Illinois, and Sanitary District of Chicago, 180 U. S. 258; Debbs, Petitioner, 158 U. S. 656; Kentucky vs. L .and N. Ry. Co., 161 U. S. 677; and Ohio Oil Co. vs. Indiana, 177 U. S. 190.

The present action is clearly distinguishable from Louisiana vs. Texas, 176 U. S. 19. It has been repeatedly held, in cases where a state has invoked the jurisdiction of other courts, that a state is the proper party to institute and prosecute, in its sovereign capacity, actions involving enforcement of its remedial statutes, where all or a large portion of the citizens of such state are affected by the violation of the law or have an interest in its enforcement; and that it is the right as well as the duty of the state to maintain such an action independent of a property or individual interest.

See Indiana vs. Ohio Oil Co., 150 Ind. 21;

(Same case, 47 L. R. A., 630);

Stockton, Atty. Gen., vs. Cent. Ry. Co. of N. J., 50 N. J. Eq. 52;

Atty. Gen. vs. R. R. Co., 35 Wis. 425;
Kentucky vs. L. & N. Ry. Co., 97 Ky. 675;
G. C. & F. S. Ry. Co. vs. State, 72 Tex. 404.

The cases of Kentucky vs. L. & N. Ry. Co., and Indiana vs. Ohio Oil Co., supra, involved an issue directly in point with the case at bar. Both those decisions were affirmed by this Court, and by implication, at least, the seal of approval was placed upon the principle involved.

Briefly stated, the attempted consolidation of the railway lines and properties of the Great Northern and Northern Pacific Railway Companies, which was defeated in the case of Pearsall vs. Great Northern Ry. Co., is now renewed by the united action of the holders of a majority of the stock of each of said companies, by placing a majority of the capital stock of each of said railway companies in the Northern Securities Company, in order that the last named company may manage and control, through its president or executive committee, all of the railway lines and properties of each of said railway companies. This action against the Northern Securities Company is brought to reach the instrument or means through and by which these two railway companies are to be consolidated, and involves an inquiry into the extent of the powers of the Northern Securities Company, and the lawfulness of its acts. Or, stated in a more direct form, the principal question raised in this action is: Can a corporation, organized under the Laws of New Jersey, use its corporate powers so as to violate or overthrow the constitutional enactment of a sister state, and thus accomplish indirectly that which this Court has held cannot be done directly; especially in view of the fact that the New Jersey corporation was organized for the express purpose of accomplishing this result.

The further question is presented, viz: Does not the consolidation of these railway companies, which own and operate all the railway lines situated in the northern half of Minnesota (except two short iron ore carriers) amount to a monopoly in railroad traffic? And is not such a monopoly the subject of challenge regardless of statutory prohibition? either State or national

We respectfully submit that the importance of the issues warrants the submission of the questions involved to this Court, which has final, and, as we believe, original jurisdiction.

W. B. DOUGLAS,
Attorney General,
and Solicitor for Complainant.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1901.

STATE OF MINNESOTA,

Complainant,

vs.

NORTHERN SECURITIES COMPANY,

Defendant.

COMPLAINANT'S BRIEF ON MOTION FOR LEAVE TO PRESENT AND FILE BILL OF COMPLAINT.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

W. B. DOUGLAS,
Attorney General,
Solicitor for Complainant.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1901.

STATE OF MINNESOTA, Complainant,

vs.

NORTHERN SECURITIES COMPANY, Defendant.

IN EQUITY.

Now comes the complainant, the State of Minnesota, by Wallace B. Douglas, its Attorney General, and moves the Court for leave to present and file the accompanying bill of complaint.

WALLACE B. DOUGLAS,
Attorney General
and Solicitor for Complainant.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1901.

STATE OF MINNESOTA, Complainant.

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NORTHERN SECURITIES COMPANY, Defendant.

IN EQUITY.

BRIEF ON MOTION FOR LEAVE TO PRESENT AND FILE BILL OF COMPLAINT.

Statement of Facts.

For a number of years past, the following provisions have been in force as a part of the statute law of the State of Minnesota, relating to Railroad Corporations, to-wit:

Chapter 29, General Laws 1874:

"Section 1. No railroad corporation, or the lessee, purchaser or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line, and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues.

"Sec. 2. This act shall take effect and be in force from and after its passage.

"Approved March 9, 1874."

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"Section 3. No railroad corporation shall consolidate with, lease or purchase, or in any way become the owner of or control any other railroad corporation or any stock, franchises, rights, or property thereof, which owns or controls a parallel or competing line.

"Sec. 4. This act shall take effect and be in force from and after its passage.

"Approved March 3, 1881."

Said General Laws of 1874 and 1881, respectively, were before this Court in 1895, and held to be constitutional enactments of the State of Minnesota, and applicable to said Great Northern Railway Company.

See Pearsall vs. G. N. Ry. Co., 161 *U. S.* 646.

In that case the plaintiff in error, a stockholder of the Great Northern Railway Company, brought his suit to enjoin the consolidation of the Great Northern Railway Company with the Northern Pacific Railway Company, the two corporations referred to in the bill of complaint in this case. The Attorney General of the State of Minnesota, by leave of this Court, filed a brief in intervention, and such attempted consolidation was held to be in violation of the Laws of the State of Minnesota above referred to.

From the bill of complaint it appears that the defendant, the Northern Securities Company, is a corporation created on the 13th day of November, A. D. 1901, under and by virtue of the laws of the State of New Jersey, and is a citizen of the State of New Jersey, and by its Articles of Incorporation, is authorized to "acquire by purchase, subscription or otherwise, and to hold * * * any shares of capital stock created or issued by any other corporation or corporations of the State of New Jersey or of any other state, territory or country," and while the owner of such stock,

to "exercise all the rights, powers and privileges of ownership including the right to vote thereon;" also, "*to aid in any manner any corporation or association of which any bonds or other securities or evidences of stock are held by such corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or any securities or evidences of indebtedness or stock.*"

It also appears from the bill of complaint that the Northern Securities Company was organized at the instigation and under the direction and control of the President and Vice President of said Great Northern Railway company, acting in concert with the owners of a majority of the stock of said last named company, as well as with the holders of a majority of the stock of said Northern Pacific Railway Company. That prior to the organization of said Northern Securities Company the holders of a majority of the stock of said Great Northern and Northern Pacific Railway Companies respectively, and acting in concert with each other and the President of said Great Northern Railway Company, as well as the prospective officers and Board of Directors of said Northern Securities Company, agreed with each other to transfer to said Northern Securities Company, in exchange for its capital stock, upon an agreed basis of exchange, a large majority of the capital stock of said Great Northern and Northern Pacific Railway Companies, respectively. That said Northern Securities Company was organized for the purpose and with the intention of effecting, and in order to effect, a consolidation of said Great Northern and Northern Pacific Railway Companies, together with their railway lines and properties, by means of and through said Northern Securities Company. That the compact or agreement above referred to was entered into with the design and purpose of evading and violating the Laws of the State of Minnesota herein referred to; and for the purpose of creating a monopoly in railroad traffic, as well as to consolidate the parallel and competing lines of railway owned by each of said rail-

way companies in the State of Minnesota, and the lines of railway extending westward therefrom to the Pacific coast; thus placing the complete management and control of all of the railway lines of each of said companies, and the power to fix and regulate charges for freight and passengers, in a single man or body of men acting as the executive head, or executive committee, of said Northern Securities Company. That after the incorporation of the Northern Securities Company the agreement above referred to was consummated by the delivery to the defendant of upwards of three-fourths of the capital stock of each of said railway companies. That defendant is now exercising the right of ownership and managing said railway properties and fixing freight and passenger rates on the lines of railway owned by said companies in Minnesota.

It also appears that a Board of Fifteen Directors was elected by the stockholders of the Northern Securities Company on or about the 14th day of November, A. D. 1901, and consists, with three exceptions, of the members of the Board of Directors of either said Great Northern or Northern Pacific Railway Companies. It also appears from the bill of complaint that a majority of the Directors of the Northern Pacific Railway Company were elected and thereafter qualified and are now acting as members of the Board of Directors of the said Northern Securities Company; and that the President of said company was and now is the President of the said Great Northern Railway Company.

The proprietary interest under which the State of Minnesota claims the right to maintain this action, is set forth in said bill of complaint in paragraphs III. and IV. The bill also sets forth fully the grounds upon which the State claims the right to maintain this action by virtue of its sovereign powers for and in behalf of the citizens of the State; and the bill then prays for an injunction upon the several grounds set forth therein.

POINTS AND AUTHORITIES.

I.

The complainant bases its request for leave to file and present its bill of complaint upon Section 2 of Article III. of the Constitution of the United States, which grants original jurisdiction to this Court in all controversies between states and between a state and a citizen of another state; and also upon congressional enactment relating thereto, and found at Section 687, et seq. Revised Statutes of United States.

The right of a state to invoke the jurisdiction of this Court, to protect its property and individual rights and interest, in an action against citizens of sister states has long been recognized.

It appears from the bill of complaint, at paragraphs III. and IV., that the State of Minnesota owns upwards of three million acres of land within its limits, which is near to, or in the territory, alone traversed by the two railways in question; and that the State is dependent almost entirely upon those roads for the development of this land, and the furnishing of transportation facilities to the same. That the value of these lands, and their salability will be greatly impaired by the consolidation referred to in the bill of complaint. It further appears that the State owns and maintains a State University, five normal schools, schools for the deaf, dumb, blind and feeble-minded, a State Training school, a school for dependent children, five hospitals for the insane, a State Prison and a State Reformatory; and necessarily pays a large amount of money annually to the two railroad companies whose properties are sought to be consolidated, for transporting supplies to such institutions, as well as for conveying inmates to and from such penal and charitable institutions. It further appears that the income of the State derived from taxation, for the maintenance of these institutions, as well as the performance of its executive, legislative and judicial

functions, will be seriously impaired and interfered with by reason of such consolidation.

It further appears from the bill that it has been a part of the settled policy of the State of Minnesota since its organization to develop the resources of the State by encouraging the building of railroads therein, by granting to railway companies large quantities of lands for the construction and maintenance of parallel and competing, as well as other lines of railway, within the State; that many millions of acres of lands, have been granted by the State of Minnesota to various companies as a consideration for building and maintaining parallel and competing lines of railway within the State, many of which railway lines are now owned or controlled by either the Great Northern or Northern Pacific Railway Company. We therefore submit that the State of Minnesota is so far interested, in its individual capacity, in the subject matter of this action as to entitle it to maintain the same.

See Pennsylvania vs. Wheeling Bridge Co., 13 *How.* 519, where the question of the State's right to maintain an action in this Court to enforce its individual or property interest is fully discussed, and the principle that a State can maintain such an action in this Court is announced.

II.

The State also claims the right to maintain this action as *parens patriae*, or as trustee or representative of all her citizens. The bill, at subdivisions III and IV, sets forth facts showing clearly that a very large portion, if not all, of the citizens of the State of Minnesota will be materially injured by the consolidation of, and the removal of competition in freight and passenger rates between, the lines of railway owned and operated by said Great Northern and Northern Pacific Railway Companies, respectively. We take it this Court will assume that the citizens of the State generally will suffer material injury by the removal of competition in freight and passen-

ger rates within the State; that is the theory upon which the State of Minnesota was allowed to intervene and file a brief in the case of *Pearsall vs. Great Northern Railway Company, supra;* and it is the fundamental principle upon which the case of *L. & N. Ry. Co. vs. Kentucky*, 161 *U. S.* 677, was decided, as well as

U. S. vs. Mo. Traffic Assn., 166 *U. S.* 290; *and*
U. S. vs. Joint Traffic Assn., 171 *U. S.* 505;

Presumably it was in recognition of this principle that Congress adopted the anti-trust law under which the last two cases referred to were brought. It is in recognition of this same principle that all of the anti-trust laws of the various states have been adopted, and, in fact, this is the basic principle of all of the decisions holding common law monopolies invalid and against public policy. Such being the case, we contend that it is not only the right, but the duty, of the State to prosecute this action in behalf of the citizens of the State.

A state is defined by Vattel as being, "a body politic or society of men united together for the purpose of promoting their mutual safety and advantage by joint effort of their combined strength." This definition holds good as to the States composing the Union with such limitations as may be imposed by the Federal Constitution. Thus, in effect, a suit brought by a state, as the representative of the people, is a suit brought by the people themselves in their collective capacity through and by means of the state; because a state in its municipal capacity is but a collection of all of the citizens of that state, and the state in its governmental capacity is the means or instrument by which the people in their sovereign capacity exercise their rights. We understand it to be upon this theory that a state is permitted to act for and on behalf of its citizens.

In re Debbs, 158 *U. S.* 564, this Court uses the following language:

"While it is not the province of the Government to interfere in any mere matter of private controversy between individuals, or to use its great powers to enforce the rights of one against another, yet, whenever the wrongs complained of are such as affect the public at large and are in respect of matters which by the Constitution are intrusted to the care of the nation, and concerning which the nation owes the duty to all the citizens of securing to them their common rights, then the mere fact that the Government has no pecuniary interest in the controversy is not sufficient to exclude it from the courts or to prevent it from taking measures therein to fully discharge those constitutional duties."

It is as much a part of the duty of a state, in its sovereign or governmental capacity, to secure to its citizens their common rights, as it is of the United States to use its sovereign powers in behalf of its citizens for a similar purpose. And if we understand the case of *Missouri vs. Illinois and Chicago District*, 180 *U. S.* 208, correctly it was in recognition of this principle that the Court took jurisdiction in that case. In that case *Justice Shiras* used the following language:

"An inspection of the bill discloses that the nature of the injury complained of is such that an adequate remedy can only be found in this Court at the suit of the State of Missouri. It is true that no question of boundary is involved, nor of direct property rights belonging to the complainant State. But it must surely be conceded that, if the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and defend them. If Missouri were an independent and sovereign State all must admit that she could seek a remedy by negotiation, and, that failing, by force. Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy and that remedy, we think, is found in the constitutional provisions we are considering.

The allegations of the bill plainly present such a case. The health and comfort of the large communities inhabiting those parts of the State situated on the Mississippi River are not alone concerned, but contagious and typhoidal diseases introduced in the river communities may spread themselves throughout the territory of the State. Moreover substantial impairment of the health and prosperity of the towns and cities of the State situated on the Mississippi River, including its commercial metropolis, would injuriously affect the entire State.

That suits brought by individuals, each for personal injuries, threatened or received, would be wholly inadequate and disproportionate remedies, requires no argument."

In the rendition of the decision just quoted from, this Court has so completely and comprehensively reviewed all of its decisions relating to the question of original jurisdiction of this Court that we deem it unnecessary to make further reference to them, beyond calling attention to that case.

The sole ground upon which the State of Kentucky claimed the right to maintain the action brought by it against the Louisville & Nashville Ry. Co., as well as one of the principal grounds upon which the State of Indiana claimed the right to maintain the action brought by it against the Ohio Oil Company, was as the representative of the interests of the citizens of those respective states.

See Kentucky vs. L. & N. Ry. Co., 97 *Ky.* 675;
Indiana vs. Ohio Oil Co., 150 *Ind.*, 21.

Both of the above cases subsequently came before this Court, and the decision of the State Supreme Court in each case was affirmed.

See L. & N. Ry. Co. vs. Kentucky, 161 *U. S.* 677;
Ohio Oil Co. vs. Indiana, 177 *U S.* 190.

In *Attorney General vs. Delaware & B. B. R. Co.*, 27 *N. J. Eq.* 631, the following language is used:

"In equity, as in the law court, the attorney general has the right, in cases where the property of the sovereign or the interests of the public are directly concerned, to institute suit by what may be called 'civil information,' for their protection. The State is not left without redress in its own courts, because no private citizen chooses to encounter the difficulty of defending it, but has appointed this high public officer, on whom it has cast the responsibility, and to whom, therefore, it has given the right of appearing in its behalf, and invoking the judgment of the Court on such questions of public moment."

Prof. Pomeroy, in section 1093 of his work on Equity Jurisprudence, states the rule in this language: "When the managing body are doing, or are about to do, an *ultra vires* act of such a nature as to produce public mischief, the attorney general, as the representative of the public and of the government, may maintain an equitable suit for preventive relief."

In the case of *Attorney General vs. Railroad Co.'s*, 35 *Wis.* 524, it was said: "The equitable jurisdiction precludes the objection that there is an adequate remedy at law. It admits the remedy at law, but administers its own remedy in preference, when the state seeks it in preference. It seems to proceed on the presumption that it may better serve the public interest to restrain a corporation than to permit it by penal remedies, or to forfeit its charter; and that, in that view, the proper officers of the state should have an election of remedies. And we may as well say in this connection that the jurisdiction to entertain these informations is wholly independent of an adequate remedy at law and that, were that otherwise, we could not consider the informations in the nature of a quo warranto, pending in this Court against these defendants, as an adequate remedy at law, which could be a substitute for or bar to the injunction asked. Judgments of ouster on those informations might not only be of far more grave consequence to the defendants, but might be far less beneficial to the state, and less accordant with

its policy, and altogether less equitable and proper, than the injunction sought to restrain the defendants from doing what is alleged to work a forfeiture of their charters."

In rendering its decision in the case of *Stockton vs. Central Ry. Co. of New Jersey*, 50 *N. J. Eq.* 52, (same case, 24 Atl. 964), the Court of Chancery of New Jersey reaffirmed the decision in the case of *Attorney General vs. Delaware & B. B. R. Co., supra*, and added: "It is well settled that where a corporate excess of power tends to the public injury or to defeat public policy, it may be restrained in equity at the suit of the Attorney General on behalf of the state."

In the case of *Trust Company of Georgia vs. State of Georgia* 48 *L. R. A.* 520, the Supreme Court of Georgia, after an exhaustive review of the authorities, summarize their conclusion as follows:

"Our conclusion, therefore, both from reason and a decided weight of authority, is that the State in its sovereign capacity can appeal to the courts for relief by injunction whenever either her property is involved or the public interests are threatened and jeopardized by any corporation, especially one of a public nature like a railroad company seeking to transcend its powers and to violate the public policy of the State."

See also G. C. & F. S. Ry. Co. vs. State, 72 *Texas*, 404;
Commonwealth vs. Pittsburg & C. R. Co., 58 *Pa.* 45;
Pennsylvania R. R. Co. vs. Commonwealth, 7 *Atl.* 374.

We do not wish to be understood as asserting that a State can maintain an action to enjoin all *ultra vires* acts or violations of law by corporations. What we do assert is, that wherever the State has a property or individual interest which is damaged by such act, it can maintain a suit to enjoin the same; or where such act results in injury to the public, or a large number of the citizens of the

State, then the State can maintain an action to enjoin the same as *parens patriae* or representative of the public welfare of her citizens. And we contend that both of these conditions exist in this case, and that the State of Minnesota has a right to maintain this action in this Court against the Northern Securities Company to determine that question.

III.

It may be urged by the other side that this court cannot entertain jurisdiction of this case for the reasons stated in the case of *Wisconsin vs. Pelican Insurance Company*, 127 *U. S.* 265. It seems to us at the outset that such a claim cannot be urged in opposition to an application for leave to file this bill; that whether or not the State of Minnesota has a right to enforce its claim against the Northern Securities Company is one of the questions the State is entitled to have this Court determine upon a full hearing; and such a question can not be fully heard and disposed of until this Court permits the State's bill to be filed, and thereafter passes upon the question or controversy either on a demurrer to the bill or upon issues joined. In case, however, the Court should differ with this contention, we will briefly state some of the reasons why the case of *Wisconsin vs. Pelican Ins. Co.* is not applicable to the one now presented.

The case of *Wisconsin vs. Pelican Ins. Co.* was an action to enforce the recovery by the state of a penalty imposed as a punishment for the violation of one of its penal statutes; and the doctrine that "the courts of no country execute the penal laws of another" was adopted and applied.

The statutes of the State of Minnesota referred to in the bill now under consideration, and the enforcement of which form a partial basis for the relief sought, are in no sense penal statutes; they provide no punishment for their violation, but their violation cre-

ates a cause of action in favor of three different classes of individuals or persons: (1) The stockholder of any railroad corporation seeking to consolidate with another in violation of the act, would have a cause of action against such corporation. *See Pearsall vs. Great Northern Ry.*, 161 *U. S.* 646. (2) Any individual or class of citizens in the State suffering special injury by reason of such violation, would have a cause of action to enjoin the same; this includes the state in its individual capacity; and (3) the State of Minnesota, acting as the representative of all of the people of the State, has the right to maintain such an action to enjoin the violation of these statutes.

In Huntington vs. Attrill, 146 *U. S.*, 657, this Court exhaustively analyzes the difference between penal laws and remedial statutes, and in defining a penal law, uses this language:

"Penal laws, strictly and properly, are those imposing punishment for an offense committed against the State, and which by the English and American Constitutions, the executive of the State has the power to pardon. Statutes giving a private action against the wrong-doer are sometimes spoken of as penal in their nature but in such cases it has been pointed out that neither the liability imposed nor the remedy given is strictly penal * * * * * * The test whether a law is penal in the strict and primary sense is whether the wrong sought to be redressed is a wrong to the public or a wrong to the individual according to the familiar classification of Blackstone."

And again in the same case, *Justice Gray* says: "The question whether a statute of one state, which in some respects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another state, depends upon the question whether its purpose is to punish an offense against the public justice of the state, or to afford a private remedy to a person injured by the wrongful act."

The statutes of the State of Minnesota, set forth in this bill, are not only not penal, but we think form a part of the contract which gives the State the right to maintain this action both in its individual capacity as well as that of *parens patriae*. The stockholders of the two railway companies whose properties and lines are sought to be consolidated in the manner set forth in the bill, have been granted the right by the state of Minnesota to be, or to exist as, corporations within said State, and to exercise the right of eminent domain. It is a well settled principle of law that the public statutes of a state relating to a corporation become and are a part of the charter of a corporation created in or permitted to do business in such State; i. e., a part of the consideration which the State receives for granting the right to be a corporation and exercise the powers and privileges as such in the state is an agreement on the part of such corporation and its stockholders that it and they will observe the laws of the State relating to such corporation.

In *Supreme Lodge, K. P. vs. Weller*, 25 S. E., 891, the Supreme Court of Virginia announced this rule in the following language:

"It is not necessary that the general law should be copied in the charter; it forms an essential part of it and all parties are bound by its terms, whether copied in the charter or found only on the statute books."

The Supreme Court of Illinois in *People vs. Chicago Gas Co.*, 22 N. E., 798, uses this language:

"The charter of a corporation does not consist of the articles of association alone, but of such articles taken in connection with the law under which the organization takes place. The provisions of the law enter into and form a part of the charter."

It must be borne in mind that in addition to the statutes referred to in the bill prohibiting the consolidation, it is alleged that the State of Minnesota has contributed over ten million acres of land in order to secure the construction and maintenance of some of the parallel and competing lines owned by either the Great Northern or Northern Pacific Railway Company. A part of the consideration which the State received for the lands granted was the implied agreement on the part of such railroad corporations and their stockholders, that these lines of railway should be maintained and operated by such corporations as parallel and competing lines. As stated in the case of *State vs. Central Iowa R. R. Co.*, 32 N. W. 409: A railroad company having constructed and put in operation its road in part at least by public aid in the way of taxation it has no right to abandon its road or turn it over to another company to the injury of the state or any portion of the citizens.

A part of the statute law of the State of Minnesota relating to railroad corporations, as the bill sets forth, has been for nearly thirty years, that no consolidation in any manner whatever shall take place between parallel and competing lines of railway within the State; i. e., one of the conditions and considerations demanded by the State for the right to be a railroad corporation and to exercise the powers and privileges of such within the State is, that free and open competition in both freight and passenger rates shall exist between the lines of railway operated by such corporations; and the violation of these statutes is a violation of the contract rights or obligations of the corporation, as well as of the stockholders thereof with the state, and, as we contend, gives the State the right to maintain an action to enjoin such violation. The enforcement of such a statute is the enforcement of a remedial statute, or a statute which gives the right to the State in its individual capacity, as well as in its capacity as the representative of its citizens, to maintain this action in any court of competent jurisdiction. It seems to us that this action and the right to maintain it comes

clearly within the case of *Huntington vs. Attrill, supra.* As stated by *Justice Gray* in that case, wherever, by either the common law or the statute law of a state, a right of action has become fixed, the enforcement of such action may be pursued in any court which has jurisdiction of such matters, and can obtain jurisdiction of the parties.

In discussing the right to maintain an action for the violation of a statute outside the state adopting the same, *Justice Gray* in the same case, uses this language: "By our law a private action may be maintained in one state, if not contrary to its policy, for such a wrong done in another and actionable there, although a like wrong would not be actionable in the state where the suit is brought."

In passing, it should be noted, that the State of Minnesota in attempting to enforce its statutory right and remedy by means of this action, is not asking this Court to enforce anything contrary to the declared public policy of New Jersey or of the National Government. The declared public policy of New Jersey and the United States is against the consolidation and unification of competing lines of railway, and the removal of competition in freight and passenger rates. This policy is declared in the so-called "Anti-trust Law" of the U. S., which has been before this Court on several occasions; notably in *U. S. vs. Missouri Traffic Assn.*, 166 *U. S.* 290, and *U. S. vs. Joint Traffic Assn.*, 171 *U. S.* 505.

The right to maintain a cause of action created by statute, or which arises by reason of the violation of a statute other than a strictly penal law, has been recognized by this court and discussed at length in the cases of *Dennick vs. R. R. Co.*, 103 *U. S.*, 11; *Texas and P. Ry. Co. vs. Cox*, 145 *U. S.*, 593; and *Huntington vs. Attrill*, 146 *U. S.*, 657, to which latter case reference has already been made, and in which cases the review by this Court of the various decisions is so exhaustive and the distinctions so clearly set forth that reference to other cases seems unnecessary. Several

of the states, since the rendition of the decision in the case of *Huntington vs. Attrill*, have changed their attitude and adopted the rule of Massachusetts and Maine.

This contract obligation to obey the laws of the State of Minnesota rests primarily upon the stockholders of the corporation; it is one of the conditions which the State demands of the persons about to form a corporation; it in effect says to them, "If you will obey the laws of the State relating to the corporation you wish to form, the State will permit you to organize as a corporation." As held by this Court in the case of *Memphis & L. R. Ry. Co. vs. Commissioners*, 112 *U. S.* 609, the franchise of being a corporation belongs to the stockholders. It logically follows that the obligation to obey the law is imposed in the first instance, and forever after remains, upon the stockholders of the corporation. That this contract is a binding one and cannot be escaped seems to us to be fully settled in the case of *Thomas vs. Ry. Co.*, 101 *U. S.* 71, speaking for the Court, *Justice Miller* said:

"That principle is that where a corporation, like a railroad company, has granted to it by charter a franchise intended in large measure to be exercised for the public good, the due performance of those functions being the consideration of the public grant, any contract which disables the corporation from performing those functions which undertakes, without the consent of the State, to transfer to others the rights and powers conferred by the charter, and to relieve the grantees of the burden which it imposes, is a violation of the contract with the State, and is void as against public policy. This doctrine is asserted with remarkable clearness in the opinion of this Court delivered by Mr. *Justice Campbell*, in the *York and Maryland Line Railroad Co. vs. Winans*, 17 *How.* 30. The corporation in that case was chartered to build and maintain a railroad in Pennsylvania by the legislature of that State. The stock in it was taken by a Maryland corporation, called the Baltimore and Susquehanna Railroad Company, and the entire management of the road

was committed to the Maryland company, which appointed all the officers and agents upon it, and furnished the rolling stock. In reference to this state of things and its effect upon the liability of the Pennsylvania corporation for infringing a patent of the defendant in error Winans, this Court said: 'This conclusion (argument) implies that the duties imposed upon the plaintiff by the charter are fulfilled by the construction of the road, and that by alienating its right to use, and its powers of control and supervision, it may avoid further responsibility. But those acts involve an overturn of the relations which the charter has arranged between the corporation and the community. Important franchises were conferred upon the corporation to enable it to provide facilities for communication and intercourse, required for the public convenience. Corporate management and control over these were prescribed, and corporate responsibility for their insufficiency provided as a remuneration to the community for their grant. The corporation cannot absolve itself from the performance of its obligations without the consent of the legislature. *Beman vs. Rufford*, 1 *Sim. N. S.* 550; *Winch vs. B. & L. Railway Co.*, 13 *L. & Eq.* 506."

See also *Gibbs vs. Baltimore Gas Co.*, 130 *U. S.* 396.

The stock of the Great Northern and Northern Pacific Railway Companies, the title to which is placed in the Northern Securities Company in the manner and for the purposes set forth in the bill, must be deemed to be held by the last named Company as though located in and subject to all the laws of the State of Minnesota; and every power sought to be exercised by it by virtue of such stockholding must be in harmony with and not in violation of the Laws of the State of Minnesota. The Northern Securities Company can exercise no power by reason of this stockholding, nor any management or control over the Great Northern and Northern Pacific Railway

Companies, which is in violation of or which tends to contravene the laws of the State of Minnesota.

(See in addition to cases cited above, *Bank of Agusta vs. Earle* 13 *Peters*, 519.)

The stockholders of a corporation, as well as the corporation itself, can perform no acts and make no contracts either within or without the State creating such corporation, except such as are authorized by its charter or some general law of the State relating to it. It follows as a necessary corollary, that a corporation, as well as its stockholders, can perform no act or make any contract or agreement which violates a remedial statute of a state creating such corporation.

The bill sets forth an act which provides, among other things, as follows:

"No railroad corporation or the lesee, purchaser or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control, *any other railroad corporation owning or having under its control a parallel or competing line.* * * * * * * No railroad corporation shall consolidate with, lease or purchase, or in any way become the owner of or control, any other railroad corporation, or any stock, franchises, rights or property thereof, which owns or controls a parallel or competing line."

It will be noticed that this statute prohibits not only the consolidation of the property and railway lines of competing companies, but it also prohibits the consolidation of the stock of such railway companies in any way whatever. This statute is a part of the general law of the State authorizing the formation of railroad corporations, and, as already stated, is an obligation or limitation which enters into and forms a part of the stockholders' contract with the State, and is therefore binding upon the defendant Northern Securities Company.

This company cannot complain of an enforcement of this contract obligation or the statutes set forth in the bill, because it claims to be a stockholder in these railway companies.

Laying aside for the time being the charge in the complaint that the Northern Securities Company is a part of a scheme and plan by which the holders of a majority of the stock of the Northern Pacific and Great Northern Railway Companies intend to effect a consolidation of the railway lines and properties of such companies, and was organized for this purpose only, and treating it as an absolute purchaser of these stocks, still the State would have the right to enforce these statutes and this contract obligation against it. The Northern Securities Company, as declared by its articles of incorporation, was organized to purchase the stock of railway companies in the State of New Jersey or *any other state in the Union* and to vote the same. From this it follows that any stock of a railway company acquired by it outside the State of New Jersey is subject to all obligations or limitations imposed upon such stock as well as the corporations issuing it.

See Pinney vs. Nelson, 22 Supreme Ct. Rept., 52.

But all of this enters more into the merit of the cause of action against the Northern Securities Company than it does into the question of jurisdiction, and we will not pursue it further at this time.

The situation of the State of Minnesota can be summarized as follows: The holders of a large majority of the capital stock of two railroad corporations authorized to construct and maintain lines within its limits, have organized a corporation in another state for the express purpose of consolidating the railway lines and property of such companies and evading and violating one of the laws of the State of Minnesota which bears directly upon and gives the State and its citizens certain rights and privileges in connection with the prop-

erty owned and controlled by the railroads thus sought to be consolidated.

The only way in which the State can reach such an evasion of its laws and enforce its rights is to bring an action in this Court against the instrument or means by which such consolidation is sought to be accomplished. If the State of Minnesota cannot avail itself of the original jurisdiction of this Court to enforce its rights, it cannot go into the State of New Jersey and ask the Courts of that State to enforce its rights, because the same reasons urged against the jurisdiction of this Court could be urged with equal force before the Courts of New Jersey.

As stated by this Court in the cases of *Missouri vs. Illinois, et al*, and *Louisiana vs. Texas, supra*, the State of Minnesota, in entering the Union, has surrendered its right to enter into any agreement or compact with another state, or to enforce its claims or protect its rights against a citizen of another state by any other means than through the peaceful halls of judicial tribunals. It now finds itself confronted with a flagrant and defiant attempt to violate its laws, invade its rights—as well as the rights of its citizens—and it comes before this Court, the constitutionally authorized tribunal to hear its claims and adjust its controversy with the citizen of another state, and ask the privilege of that jurisdiction.

As said, in effect, by *Alexander Hamilton, in No. 81 of the Federalist*, It would ill suit the dignity of the State to be denied this jurisdiction. In this connection we have no doubt this language of *Chief Justice Marshall* will recur to the minds of the Court: "As this Court has never grasped an ungranted jurisdiction, so will it never, we trust, shrink from the exercise of that which is conferred upon it." (*See Fisher vs. Cockerell*, 5 *Peters*, 259.) Also this language of Chief Justice Waite: "The evident purpose was to open, and keep open, the highest court of the nation for the determination, in the first instance, of suits involving a state, or a diplo-

matic or commercial representative of a foreign government." (*See Ames vs. Kansas*, 111 *U. S.* 649.)

The bill discloses that this consolidation embraces about seventeen thousand miles of railroad, furnishing nearly all the transportation facilities available to the people of seven different states of the Union, which seven states embrace more than one-fifth of the entire area of the United States, and nearly one-twelfth of its population.

While it is not a part of the duty of the State of Minnesota to enforce the rights of the citizens of any other state, and it does not seek to do so, we ask this Court to turn to those facts of which it has a right to take judicial notice, and it will learn that six of these seven states, through which these roads pass, have constitutional or statutory inhibitions similar to the one which the State of Minnesota now seeks to enforce in this action. We refer to this only for the purpose of disclosing the far reaching effect of this tremendous consolidation. If the State of Minnesota cannot maintain this action we fail to see how it is possible for any state to enforce remedial statutes adopted for the protection of the interests of its citizens, as well as to protect its individual rights.

If what is attempted to be done here can be successfully accomplished, the States of this Union are powerless to enforce such statutes. The National Government, under its present constitutional limitations, can enact no legislation which will protect state commerce and state traffic against such a monopolistic consolidation as is referred to in this bill. The only practical way the state can protect itself is by the adoption of legislation of the character sought to be enforced in this action, and the only tribunal in which that can be enforced under the circumstances disclosed in this bill, is the one to which we now appeal.

It seems to us that there is a controversy between the State of Minnesota and the defendant corporation—a citizen of the State of New Jersey—which, under the constitutional provision already referred to, entitles the State of Minnesota to the privilege of the

jurisdiction of this Court; in fact, this is the only judicial tribunal in which the State of Minnesota can well assert its claim and present its controversy against the defendant.

IV.

There is a further ground of complaint set forth in the bill, and that is that this consolidation tends to create a monopoly in railroad traffic within the State of Minnesota, and thus amounts to a common law nuisance, which the State is entitled to enjoin. In this connection it seems to us proper to urge the attention of the Court to the fact that the statutes referred to in this bill in one sense prohibit the creation of a nuisance; and the creation and maintenance by a citizen or citizens of another state of a nuisance which operates upon and affects the property of the citizens of the State making the complaint, entitles such state to enjoin the same, under the decision of *Missouri vs. Illinois, supra.*

The State will also urge, in case it is allowed to file its bill of complaint, that it is entitled to avail itself of the provisions of Section 26, Stat. 209, C. 647, being the National Anti-trust Law. All of these questions, however, necessitate a lengthy discussion and, in accordance with our view of the case, enter more into the merits of the controversy than into the question of jurisdiction, and should, therefore, not be discussed in connection with this motion, but rather be left for discussion and consideration after the bill is filed. There are many other questions entering into the relation of the Northern Securities Co. as a stockholder of the Great Northern and Northern Pacific Railway Companies with the State of Minnesota, as well as the obligations of the stockholders in such corporations, which have not been referred to in this brief for the same reason.

RECAPITULATION.

Recapitulating, some of the reasons upon which it is claimed this Court has jurisdiction of this controversy, as provided in Section 2 of Article III of the Federal Constitution, it is urged:

First. That the decision of this Court in *Missouri vs. Illinois, supra,* is practically conclusive upon the question that the State of Minnesota is the proper party to maintain such an action.

We insist that the principle involved is substantially identical, the only distinction being that in *Missouri vs. Illinois* the application was to enjoin an act affecting the public health, while in the case at bar, the application is to enjoin an act affecting the public purse as well as the public welfare.

Second. That the decisions of the courts of Texas, Wisconsin, New Jersey, Indiana and Kentucky, in the cases of *G. C. & F. S. Ry. Co. vs. State; Attorney General vs. Railway Co.; Stockton, Attorney General vs. Central Ry. Co.; Indiana vs. Ohio Oil Co.;* and *Kentucky vs. L. & N. Ry. Co.,* respectively, cited *supra,* determining that a State in its sovereign capacity may maintain an action in the State courts of a like nature affecting the general public welfare, while not conclusive upon this Court, are entitled to great weight. Actions in those cases were brought and maintained in the State courts of necessity, for the reason that the defendants were citizens of the State instituting the action. Attention is again called to the fact that the Kentucky and Indiana cases were affirmed by this Court.

Third. That this action is maintainable in this Court upon the ground that it appears from the bill of complaint, the State of Minnesota in its individual capacity has a proprietary interest.

Fourth. That the enactments of the State of Minnesota set forth in the bill of complaint prohibiting the consolidation of parallel and competing lines of railway, or the capital stock of railway companies owning such lines, must be read into and deemed a

part of the charter contract existing between the State and the two railway companies in question, and constitute an obligation between the stockholders of such railway companies and the State of Minnesota which entitles the State to maintain an action in this Court to enforce the provisions of these statutes.

Fifth. That the bill of complaint clearly charges that it is the purpose of the defendant to create and perpetuate a monopoly in railway traffic in Minnesota which amounts to a public nuisance, is against sound public policy and void. The maintenance and carrying out of this nuisance is sought to be enjoined.

Sixth. That the defendant was organized for the purpose of and is actually dictating the management of two parallel and competing lines of railway in Minnesota to the injury of the general public, as well as to the State of Minnesota in its individual capacity; and therefore this action which involves the extent of the powers and the lawfulness of the acts of the defendant, is a controversy between the State of Minnesota and the citizen of another State, and within the original jurisdiction of this Court.

Seventh. That the framers of the Constitution, and the people of the different states in adopting that instrument, designated in explicit terms a great forum in which controversies between a state and the citizen of another state may be determined; to restrict, by the construction of Section 2 of Article III, the jurisdiction of this Court so as to exclude a controversy of this character will, we respectfully submit, operate to deny to the State of Minnesota the right to present its controversy to any court in the Nation.

The State of Minnesota respectfully submits its motion for leave to file its bill of complaint in this Court, and asks that the same be granted.

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